SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 534

RAY INGELS, AS DIRECTOR OF THE DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA, ET AL., APPELLANTS,

vs.

PAUL GRAY, INC., AL ASHER, AND HIRSCH MERCANTILE COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

INDEX.

	Original	Print
Record from D. C. U. S., Southern District of California	a	1
Caption ..... (omitted in printing)	a	
Citation and service ..... (omitted in printing)	1	
Bill of complaint	4	1
Exhibit "A"—Act to regulate the caravaning of vehicles upon the public highways, etc.	17	11
Motion to dismiss	24	16
Minute entry showing withdrawal of motion to dismiss, etc.	26	16
Proposed amendments to bill of complaint	27	17
Answer of defendants	29	18
Order allowing proposed amendments to bill of complaint.	34	21
Findings of fact and conclusions of law on interlocutory injunction (omitted in printing)	35	
Interlocutory injunction	43	21
Stipulation re affidavit of E. Raymond Cato, etc.	47	24
Motion to strike from affidavit of E. Raymond Cato	49	24
Order denying motion to strike	61	35

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 27, 1939.

	Original	Print
Record from D. C. U. S., Southern District of California—Continued.		
Opinion, Cosgrave, J.	63	36
Dissenting opinion, Yankwich, J.	73	43
Findings of fact and conclusions of law	94	57
Decree	107	69
Statement of evidence	110	70
Caption	110	70
Stipulations as to certain evidence	111	71
Testimony of Wm. B. Manford	115	75
Frank B. Murchison	117	77
Charles E. Miske	120	79
Stipulation in regard to the transportation of Studebaker automobiles in Zone 1	122	80
Stipulation as to new International trucks in Zone 1	122	81
Stipulation as to cars caravaned to California	123	81
Testimony of Earl W. Personius	123	81
Frank B. Ench	144	99
Walter P. Greer	146	101
Al Asher	150	105
Paul Gray	153	108
Stipulation re testimony of E. Raymond Cato	155	109
Testimony of E. Raymond Cato	156	109
Affidavit of Ray Ingels	158	111
E. E. Edenholm	164	116
M. F. Shaw	168	119
W. J. Holm	171	121
Roy S. Busby	176	126
George D. Cron	179	127
Van Peabody	186	131
Roy B. Alexander	189	133
Glen C. Stater	192	135
Fred Ehlers	195	136
Glenn S. Roberts	198	138
Lee S. Scott	203	142
R. W. Adams	212	147
J. M. Hunt	215	149
Tod Bates	218	150
E. Raymond Cato	227	157
Stipulation approving statement of evidence	242	167
Order approving statement of evidence	242	168
Petition for appeal	244	168
Assignments of error	246	169
Order allowing appeal	251	173
Bond on appeal (omitted in printing)	254	
Substitution of attorneys	298	175
Praecipe for transcript of record	299	175
Clerk's certificate (omitted in printing)	303	
Statement of points to be relied upon and designation as to printing record	305	177

[fols. a-1–4]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. Eq-1203-C

PAUL GRAY, INC., a California Corporation; AL ASHER; Hirsch Mercantile Company, a California Corporation; Melvin E. Snyder, an Individual Doing Business under the Firm Name and Style of United Auto Sales; Kelley Kar Company, a California Corporation; L. H. Thayer; National Motor Car Company, a California Corporation; Samuel A. Klein, an individual Doing Business under the Firm Name and Style of Klein Auto Company; Bill Sanella; C. O. Mace; Ray Culbertson and Jack Parmilee, a Copartnership Doing Business under the Firm Name and Style of Culbertson & Parmilee Motor Sales; E. F. Porter; Don Cardiff and F. A. Rodgers, a Copartnership Doing Business under the Firm Name and Style of Cardiff & Rodgers; and Motor Trading Company, a California Corporation, Plaintiffs,

vs.

RAY INGELS, as Director of the Department of Motor Vehicles of the State of California; Howard E. Deems, as Registrar of the Department of Motor Vehicles of the State of California, and Lon W. Butler, as Manager of the Los Angeles Office of the Department of Motor Vehicles of the State of California, Defendants

BILL OF COMPLAINT—Filed July 14, 1937

Come now the plaintiffs and for cause of action against the defendants, and each of them, allege as follows:

I

That the plaintiffs Paul Gray, Inc., Hirsch Mercantile Company, Kelley Kar Company, National Motor Car Company and Motor Trading Company are corporations duly organized and existing under and by virtue of the laws of the State of California and having their principal place of [fol. 5] business in the County of Los Angeles, State of California.

11

II

That the plaintiffs Ray Culbertson and Jack Parmilee are copartners doing business under the firm name and style of Culbertson & Parmilee Motor Sales, with their principal place of business in the County of Los Angeles, State of California; that the plaintiffs Don Cardiff and F. A. Rodgers are copartners doing business under the firm name and style of Cardiff & Rodgers, with their principal place of business in the County of Los Angeles, State of California.

III

That the plaintiffs Al Asher, L. H. Thayer, Bill Sanella, C. O. Mace and E. F. Porter are individuals residing in, and citizens of, the City of Los Angeles, County of Los Angeles, State of California; that the plaintiff Melvin E. Snyder is an individual doing business under the firm name and style of United Auto Sales with his principal place of business in the County of Los Angeles, State of California; and that the plaintiff Samuel A. Klein is an individual doing business under the firm name and style of Klein Auto Company, with his principal place of business in the County of Los Angeles, State of California.

IV

That the defendant Ray Ingels is now, and at all times herein mentioned was, the duly appointed, qualified and acting Director of the Department of Motor Vehicles of the State of California; that the defendant Howard E. Deems is now, and at all times herein mentioned was, the duly appointed, qualified and acting Registrar of the Motor Vehicle Department of the State of California, and that the defendant Lon W. Butler is now, and at all times mentioned herein was, the duly appointed, qualified and acting Man-
[fol. 6] ager of the Los Angeles Office of the Department of Motor Vehicles of the State of California, having its principal place of business in the City of Los Angeles, County of Los Angeles, State of California.

V

That the amount involved in this litigation is in excess of Three Thousand Dollars ($3,000.00), exclusive of interest and costs.

VI

That all of the plaintiffs herein are joined together in this action and are interested in the outcome thereof, in that said plaintiffs have caused to be driven into the State of California, or will in the usual course of their business so cause to be driven into said state from outside thereof, automobiles for the purpose of resale, which automobiles now are or will be subject to the requirements of Chapter 788 of the California Statutes of 1937 imposing certain license fees or taxes, as hereinafter described; that said plaintiffs will so cause to be driven into the said State of California their automobiles for the purpose of resale under circumstances similar in nature to those of the said plaintiff Paul Gray, Inc., a California corporation, as more fully set forth hereinafter, and that the defendants have taken similar action as to attempting to enforce the provisions of said statute and threaten to take similar action with reference thereto against the said plaintiffs, and each of them; that the said plaintiffs are joined herein with the plaintiff Paul Gray, Inc., a California corporation, for the purpose of avoiding a multiplicity of suits.

VII

That prior to July 1, 1937, the plaintiff Paul Gray, Inc., purchased in Detroit, Michigan, a certain 1937 Ford DeLuxe Model 78 Club Coupe bearing a 1937 Michigan license No. X98879, and caused the same to be driven on its own wheels in convoy with other caravaned automobiles from the said [fol. 7] point of purchase into the State of California where it crossed over the California state line on or about July 6, 1937, at Yermo Station No. 8, and thence driven on its own wheels to its destination in Los Angeles, California, for the purpose of resale; that on or about July 8, 1937, the defendant Howard E. Deems, Registrar of the Department of Motor Vehicles of the State of California, acting through his agents, servants and employees, made a written demand upon the said plaintiff Paul Gray, Inc., a California corporation, to submit immediately a list of such cars, giving make, model, body, type, engine, and serial number, and the number of the caravan permits which the said plaintiff obtained prior to their entry into California, the said defendant, through his agents, servants and employees, pur-

porting to act under authority of Chapter 788 of the California Statutes of 1937, which said act is entitled:

"An Act to regulate the caravaning of vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of vehicles in caravan for the privilege of using the public highways and for the cost of regulating persons engaged in caravaning and providing such fees shall be a lien and for the enforcement of such liens and the collection and disposition of such fees and imposing penalties for violation thereof, and to repeal an act entitled "An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term 'caravaning' and providing for the licensing of motor vehicles in caravan and imposing penalties for violation thereof," approved July 6, 1935, declaring the urgency thereof, and providing that it shall take effect immediately."

and which went into effect on July 3, 1937; that thereafter on July 8, 1937, in reply to the aforementioned written demand by the defendant Howard E. Deems, as Registrar of the Department of Motor Vehicles of the State of California, the said plaintiff made a written reply to said defendant, stating that the said plaintiff had brought into California for the purpose of resale since July 3, 1937, one 1937 Ford DeLuxe Model 78 Club Coupe, engine No. 18-3800916, bearing a Michigan 1937 license No. X98879, for which no caravan permit had been obtained under Chapter 788 of the [fol. 8] California Statutes; that the said plaintiff Paul Gray, Inc., a California corporation, further informed the said defendant that the aforementioned automobile was driven from Detroit, Michigan, and entered the State of California on July 6, 1937, through Yermo Station No. 8, and was now in the possession of the said plaintiff; that on July 9, 1937, the said defendant Howard E. Deems, through his agents, servants and employees, in writing demanded that the said plaintiff make application forthwith to the Department of Motor Vehicles at Sacramento, or one of its regularly established offices, for caravan permits covering the aforementioned vehicle, and other vehicles theretofore or thereafter caravaned within the provisions of said chapter 788 and further demanded that the said plaintiff pay a charge of Fifteen Dollars ($15.00) for each such permit, plus a fifty per cent (50%) penalty of Seven and 50/100

Dollars ($7.50) for not having obtained the permit on said Ford Coupe according to law prior to the entry of the vehicle into California; that the said defendant then threatened and now threatens that the Department of Motor Vehicles of the State of California would and will seize and sell the said vehicle for the fees due, in accordance with Section 12 of Chapter 788 of the California Statutes of 1937, for failure to obtain the permit, as demanded.

VIII

That a copy of the aforementioned act, being Chapter 788 of the California Statutes of 1937, is hereto attached, marked "Exhibit A" and made a part hereof by reference with the same force and effect as though set forth in full herein. That by the terms of said act no person, firm or corporation shall use any highway in this state for the purpose of bringing or causing to be brought any vehicle operated on its own wheels or in tow of a motor vehicle into the state for the purpose of sale or offering the same for sale, whether the purchaser or prospective purchaser be located within or without the state, unless and until there shall first [fol. 9] have been secured from the Motor Vehicle Department of the State of California upon application at its office in Sacramento, or any of its regularly established branch offices, other than stations at the state boundary line, a special permit as to each vehicle so caravaned; that as a condition precedent to the use of said highways for the aforesaid purpose and the issuance of any special permit the said act requires the payment to the Motor Vehicle Department of the State of California for each vehicle for which a caravan permit may be issued, whether such vehicle be operated under its own power or in tow of a motor vehicle, a fee of Seven and 50/100 Dollars ($7.50) as compensation for the privilege of using the public highways of this state, and a fee of Seven and 50/100 Dollars ($7.50) to reimburse the state for expense incurred in administering police regulations pertaining to the operation of vehicles moved pursuant to such permits and the public safety upon the highways as affected by such operations; that said permits are valid for a period of six (6) months after the date of issuance and no longer and only for such period within the said six (6) months that the vehicle is operated for the purpose of sale or exchange; that the said act further provides

that the provisions thereof shall not apply to the transportation of motor vehicles between points within Zones 1 and 2 into which the said state is divided; that all dealers in vehicles are required by the said act to list with the Motor Vehicle Department every vehicle received, held or offered by him for sale which has been caravaned over the public highways of the said state, such report and listing to be made immediately upon receipt of such vehicle, and in the event no permit has been secured for such operation the said fees are required to be paid to said Department, together with a penalty of fifty per cent (50%) thereof for each such vehicle; that the permit fees are required by said [fol. 10] act to be paid in advance of the operation upon the public highways by any vehicle for which such permit is required in order to avoid the penalty hereinbefore mentioned, and the said Department is provided a lien against the vehicle on which said payments are due during the time said vehicle is held for sale or offered for sale or resale; that the act further provides that a violation thereof will subject a person to a fine of not more than Five Hundred Dollars ($500.00) or imprisonment in the county jail for not more than six (6) months, or both fine and imprisonment.

IX

That pursuant to the said act the defendants have demanded, and do now demand, that the plaintiffs before moving their automobiles into the State of California in the aforementioned manner obtain such a special permit from the Department of Motor Vehicles of the State of California for each of the motor vehicles of said plaintiffs so moved into the said state and to pay to the Department of Motor Vehicles of the State of California for each of such permits the sum of Fifteen Dollars ($15.00).

X

That the sole occupation of the plaintiff Paul Gray, Inc., a California corporation, and of the other plaintiffs herein, and of each of them, is that of buying, selling and trading in motor vehicles; that they now are, and for many years last past have been, engaged in said occupation in full conformity and compliance with all of the laws of the State of California and County of Los Angeles; that from time to time in conducting the business of the said plaintiffs, and

each of them, they purchase motor vehicles which have previously been registered in a state other than the State of California and cause the same to be caravaned into the said State from other states on their own wheels or in tow of some motor vehicles for the purpose of resale; that the said plaintiff Paul Gray, Inc., a California corporation, and the [fol. 11] other plaintiffs herein over a period of years have built up substantial businesses from which they derive a good income.

That the plaintiffs in the operation and conduct of their said business as automobile dealers purchase motor vehicles of the ordinary pleasure type in states other than California and cause the same to be driven from the points of purchase to their places of business in the City of Los Angeles, State of California; that from the time said plaintiffs purchase said automobiles and during their said transportation from the points of purchase in other states to the said destination in Los Angeles, California, and until the same are sold, the plaintiffs are engaged solely in interstate commerce; that the said transportation and purchase of said automobiles by the plaintiffs herein are necessary for the continuance of the conduct of their business, and that if they are deprived of said right to purchase and drive the said automobiles over the highways of the State of California to their places of business in the City of Los Angeles for the purpose of resale and of the right to sell the said vehicles, their said businesses may be destroyed and they will suffer irreparable injury thereby; that the plaintiff Paul Gray, Inc., a California corporation, has built up a business, the value of which is in excess of Five Thousand Dollars ($5,000.00), and that it causes to be caravaned into the said state in the manner aforementioned approximately one hundred fifty (150) automobiles each year; that the net profits on each transaction culminating in the sale of said vehicles do not exceed the sum of approximately Ten Dollars ($10.00); that if the said plaintiff is required to expend Fifteen Dollars ($15.00), pursuant to the provisions of the aforementioned act for a permit for each of the vehicles which it so causes to be brought into the state for the purpose of resale, it will be forced to discontinue the purchase in other states of automobiles, as the only economically feasible method of trans- [fol. 12] portation of said vehicles is through their operation upon their own wheels, either in tow or separately, and that by reason of such discontinuance of the purchasing of

the said vehicles in other states the business of the said plaintiff and of the other plaintiffs herein will be destroyed, and they will suffer irreparable injury thereby.

XI

That the said defendants, and each of them, purporting to act under the authority of and by virtue of Chapter 788 of the California Statutes of 1937, have threatened and are threatening to seize the aforementioned automobile of the plaintiff Paul Gray, Inc., a California corporation, and to sell the same in order to secure the aforementioned fees and penalty required by the said act, that the said defendants, and each of them, intend to, threaten to, and will continue to make the same demands for fees and threats of seizure against the plaintiffs, and each of them, in the future, at such times as the said plaintiffs endeavor to move their said automobiles into the said State of California for the purpose of sale in the manner aforesaid, and to invoke against said plaintiffs the penalty imposed by the aforementioned statute for any failure on the part of the plaintiffs to secure the said permits and to pay the said fees and charges; that there is no valid provision of law whereby and whereunder these plaintiffs may recover from said defendants or from the State of California any sums, fees or charges by them paid or to be paid as aforesaid; that the transportation and moving of the automobiles in the manner aforesaid into the State of California over its public highways is necessary to the continued conduct of the business of said plaintiffs as automobile dealers, and if said defendants be permitted to carry out their aforementioned threats and intention and to enforce against these plaintiffs the provisions of said [fol. 13] statute, and unless said defendants, their deputies, servants, agents and employees, be enjoined and restrained from so doing, these plaintiffs will suffer irreparable loss and injury and their said businesses will be destroyed and the rights of said plaintiffs to carry on their said businesses and the protection guaranteed to them by the provisions of Section 8 of Article I and by the provisions of the 14th Amendment to the Constitution of the United States will be violated and destroyed.

XII

That the plaintiffs herein have no plain, speedy or adequate remedy at law.

XIII

That the said Chapter 788 of the Statutes of 1937 of the State of California is unconstitutional upon the following grounds and for the following reasons:

(a) That said act is in contravention of and repugnant to Article 1, Section 8, of the Constitution of the United States, otherwise known as the "commerce clause," for the following reasons:

1. That said statute constitutes a burden upon interstate commerce and is not for the purpose of permissible highway regulation but is a revenue measure only.

2. That said statute is not a proper exercise of the police power of said state as a regulation of the use of its highways, or for the protection of the health, morals or safety of the public.

3. That said statute imposes an unlawful charge on these plaintiffs for the privilege of engaging in interstate commerce.

4. That said statute is an unlawful discrimination against [fol. 14] interstate commerce and is not based upon any reasonable basis of licensing, but is arbitrary, discriminative and unfair and has the effect of imposing an unjustified burden upon business in interstate commerce and is intended to, does, and will, so injure the business of said plaintiffs in interstate commerce that it will be impossible for said plaintiffs to continue in their business.

5. That the charges and fees required of plaintiffs by virtue of said statute are arbitrary, unreasonable and excessive in amount and bear no reasonable relation to the use of the highways of the State of California by the said plaintiffs.

(b) That said act is in contravention of and repugnant to the 14th Amendment to the Constitution of the United States for the following reasons:

1. That it deprives these plaintiffs of their property, to wit, moneys they are required to pay for use of the public highways of the State of California, without due process of law.

2. That it further deprives these plaintiffs of their property, to wit, their business of buying, selling and dealing in

automobiles and their right to engage in said lawful business, without due process of law.

3. That it denies to these plaintiffs when engaged in interstate commerce in the State of California, as aforesaid, the equal protection of the law.

4. That it provides for unreasonable and arbitrary classification in that it applies only to those persons, firms or cor- [fol. 15] porations using the highways for transportation of motor vehicles for the purpose of sale and does not apply to other persons using said highways for pleasure or purposes other than sale.

5. That it provides for an unreasonable and arbitrary classification in that it specifically provides that the requirements of said act shall not apply to the transportation of motor vehicles between points within certain zones into which said State of California is arbitrarily divided for the purposes of said act.

6. That the tax, fee or charge provided by the said act is wholly disproportionate to other taxes, fees or licenses charged by the State of California either for the registration of vehicles in said state or for vehicles using the highways in said state.

7. That the tax, charge or fee provided by said act is exorbitant and arbitrary and unfair to such a degree that the interstate business in which plaintiffs are engaged in the State of California will return a revenue to said state in proportion far in excess of other fees, licenses or taxes charged other persons for the use of the highways of said state.

Wherefore, plaintiffs pray for the following relief:

1. For a temporary restraining order of this Court directed to the said defendants, their agents, servants, employees and deputies, and all persons acting under and through their authority, respectively, as Director of the Motor Ve- [fol. 16] hicle Department of the State of California, enjoining and restraining them, and each of them, from enforcing or attempting to enforce, as against these plaintiffs, the provisions of said Chapter 788 of the Statutes of 1937 of the State of California.

2. For a citation directed to said defendants, and each of them, ordering them to appear before a three judge court at a time and place to be hereafter affixed by order of court, and there show cause, if any they have, why a temporary injunction should not be issued herein as is by the law and practice of this court contemplated.

3. For a final and permanent injunction upon hearing of the merits of this case before a three judge court, finally and permanently enjoining each of the said defendants, their agents, servants, employees and deputies, and all persons acting under or through their authority as such respective officials, from enforcing or attempting to enforce, as against these plaintiffs, the provisions of said Chapter 788 of the Statutes of 1937 of the State of California, and from exacting or attempting to exact from these plaintiffs the payment of any sums, charges or fees in said statute unlawfully required of them to be paid by reason of their aforesaid use and intended use of the highways of the State of California in the manner hereinabove set forth.

4. Said plaintiffs pray for such other and further relief as to the Court may seem adequate, equitable and just.

Paul Gray, Inc., by Paul Gray, President, One of the Above-named Plaintiffs. L. E. Tripp, George Penney, Hulen C. Callaway, D. Paul White, Solicitors for Plaintiffs.

[fol. 17] EXHIBIT "A" TO BILL OF COMPLAINT

"An act to regulate the caravaning of vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of vehicles in caravan for the privilege of using the public highways and for the cost of regulating persons engaged in caravaning and providing such fees shall be a lien and for the enforcement of such liens and the collection and disposition of such fees and imposing penalties for violation thereof, and to repeal an act entitled 'An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term 'caravaning' and providing for the licensing of motor vehicles in caravan and imposing penalties for viola-

tion thereof,' approved July 6, 1935, declaring the urgency thereof, and providing that it shall take effect immediately.

The people of the State of California do enact as follows:

Section 1. The term "caravaning" as used in this act shall mean the transportation of any vehicle of a type subject to registration under the Vehicle Code, operated on its own wheels, or in tow of a motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, purchaser or prospective purchaser, whether such agent, dealer, purchaser or prospective purchaser may be located within or without this State.

Sec. 2. The term "dealer" when used in this act shall mean and include every individual, partnership, corporation or trust whose business in whole or in part is that of caravaning new or used vehicles as herein defined, or of selling or exchanging new or used vehicles, and shall include every agent or representative of every such person engaged in such business, except that nothing herein contained shall be construed to require the performance of any act or the payment of any fee by any agent or representative which has previously been performed or paid by his principal.

Sec. 3. No person, firm or corporation, shall use any high- [fol. 18] way in this State for caravaning vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California upon application at its office in Sacramento or any of its regularly established branch offices other than stations at the State boundary line a special permit as to each vehicle so caravaned, for use of the highways of this State in caravaning such vehicles, which permit shall be displayed by posting the same upon the windshield of such vehicle or in other prominent place thereon where it may be readily legible.

Sec. 4. As a condition precedent to the use of the highways of this State for the purpose of caravaning and the issuance of any special permit provided for in the previous section of this act, the Motor Vehicle Department of the State of California shall charge and collect, for each vehicle for which a caravan permit may be issued whether such vehicle be operated under its own power or in tow of a motor vehicle, a fee of seven and fifty one-hundredths dol-

as compensation for the privilege of using the public
ıways of this State and a fee of seven and fifty one-
dredths dollars to reimburse the State for expense in-
red in administering police regulations pertaining to the
ration of vehicles moved pursuant to such permits and
ublic safety upon the highways as affected by such oper-
n.

ec. 5. Permits issued pursuant to the provisions of this
shall be valid for a period of six months after date of
ance and shall be valid only in the hands of the original
mittee but shall not authorize the operation of any ve-
e other than that for which originally issued. Such per-
s shall contain such information and be in such form and
ll be issued under such rules and regulations as may be
scribed by said Motor Vehicle Department.

ec. 6. The fee paid for any caravaning permit issued un-
this act shall be in lieu of all other registration fees and
. 19] license fees for the use of public highways in this
te by such vehicle during the period that such vehicle
be operated for the purpose of sale or exchange under
solely in accordance with such permit upon the public
ıways of this State; provided, however, that nothing
his section shall exempt the owner or operator of such
icle from compliance, except with respect to fees or
nse charges, with all laws of this State now or hereafter
pted, relating to safety in the use of the public high-
s.

ec. 7. All fees from the issuance of permits provided
under this act shall be collected by the Motor Vehicle
artment. One-half of such fees shall be paid into and
ome a part of the motor vehicle fund in the State Treas-
, and are hereby appropriated out of said fund for the
port of the Department of Motor Vehicles; provided,
ever, that should a motor vehicle support fund be cre-
l in the State treasury said one-half of such fees shall
aid into and become a part of said motor vehicle sup-
t fund. The remainder of such fees shall be paid into
become a part of the State highway fund in the State
asury. The moneys so derived by the State are intended
compensation for the privilege of using the highways
his State and to reimburse the State treasury for the
ed expense which the State may incur in the collection

of such fees and in the administration and enforcement of this act and the expense of policing the highways over which such caravaning may be conducted.

Sec. 8. The provisions of this act shall not apply to the transportation of motor vehicles between points within Zone 1 or between points within Zone 2, which zones are hereby defined as follows:

Zone 1. That part of the State of California lying within the counties of San Diego, Imperial, Orange, Riverside, San Bernardino, Los Angeles, Ventura, Santa Barbara, [fol. 20] San Luis Obispo, Kern and Inyo;

Zone 2.—That part of the State of California not included within Zone 1 as herein defined.

Sec. 9. Every dealer in vehicles shall report to and list with the Motor Vehicle Department on forms to be prescribed by such department and in accordance with rules in regard thereto promulgated by such department, each vehicle received, held or offered by him for sale which has been caravaned over the public highways of this State. Such report and listing shall be made forthwith upon the receipt of such vehicle. Such report, among other things, shall show the number of the caravan permit authorizing the operation of the vehicle covered in such report. In the event no permit has been secured for such operation payment of the required fees and penalty shall be made to the department and shall accompany such report. In the event permit fees required by this act are not paid when due a penalty of fifty per cent of such fees for each such vehicle shall be assessed and collected by the department.

Sec. 10. On demand of the Motor Vehicle Department, any dealer in vehicles shall furnish to the department evidence as to the origin of any vehicle not previously registered in this State which is held or offered by him for sale, and evidence of the manner in which such vehicle was transported to the place in which it is or has been held or offered for sale. It shall be prima facie evidence that a vehicle not previously registered in this State is or has been transported for purpose of sale if it is exchanged, sold, or offered for sale within thirty days after it has been operated over the public highways of this State.

Sec. 11. The permit fees provided for herein shall be due and payable in advance of the operation upon the public

highways of any vehicle for which such permit is required [fol. 21] and shall be a lien against the vehicle for which they are due during the time such vehicle is held for sale or offered for sale or resale.

Sec. 12. The department shall collect the permit fees and enforce the liens provided for herein by seizure of the vehicle or vehicles upon which such fees are a lien from the person or persons in possession thereof, if any, and by sale of such vehicle. The seizure and sale herein authorized may be made at any time after such fees become due and shall be conducted and carried out by the department in the same manner as is provided by law for the seizure and sale of personal property by the assessor for the collection of taxes due on personal property.

Sec. 13. Violation of any of the provisions of this act is a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Sec. 14. If any section, paragraph, clause or phrase of this act should be held to be unconstitutional by any court of competent jurisdiction such holding shall not affect any other part of this act and it is hereby declared to be the intention of the Legislature that no section, paragraph, sentence, clause or phrase of this act has been an inducement to the enactment of any other part hereof.

Sec. 15. An act entitled "An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term 'caravaning' and providing for the licensing of motor vehicles in caravan and imposing penalties for violation thereof," approved July 6, 1935, is hereby repealed.

Sec. 16. This act is hereby declared to be an urgency measure within the meaning of section 1 of Article IV of the Constitution, necessary for the immediate preservation of the public peace, health and safety and as such shall [fol. 22] take effect immediately.

The following is a statement of facts constituting such necessity:

Experience has shown that, due to climatic conditions, the caravaning of vehicles occurs almost exclusively during

the spring and summer months. It is necessary, therefore, in order to regulate caravan vehicles, the number of which is now increasing, that this act shall take effect immediately.

[fol. 23] *Duly sworn to by Paul Gray. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 24] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed August 24, 1937

The defendants above named hereby move, and each of them hereby moves to dismiss the bill of complaint on file herein upon the following grounds:

1. That this court is without jurisdiction over the subject matter alleged in said bill of complaint for the reason that the amount involved does not exceed Three Thousand ($3000.00) Dollars, exclusive of interest and costs.

[fol. 25] Wherefore, said defendants respectfully request that plaintiffs' bill of complaint herein be dismissed and that said defendants go hence with their costs of suit incurred herein.

U. S. Webb, Attorney General, by John O. Palstine, Deputy Attorney General, Attorneys for said Defendants.

[File endorsement omitted.]

[fol. 26] IN UNITED STATES DISTRICT COURT

[Title omitted]

MINUTE ENTRY—September 13, 1937

This cause coming before the Court for hearing on motion of defendants to dismiss bill of complaint pursuant to motion filed Aug. 24, 1937; D. Paul White, Esq., appear-

ing as counsel for the plaintiff; John O. Palstine, Deputy Attorney General of the State of California, appearing in behalf of the defendants;

D. Paul White, Esq., makes a statement to the Court and requests permission to make certain interlineations to the Bill of Complaint, and it is ordered that Attorney White present memorandum of amendments to be made, at which time the Court will enter a minute order authorizing said amendments, the said John O. Palstine, Esq., having stated that in view of the amendments to be made by interlineation he will not move to dismiss the plaintiff's Complaint as amended, and Attorney Palstine, who now withdraws his motion to dismiss, is allowed ten days to file his Answer to the Bill of Complaint as amended.

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

PROPOSED AMENDMENTS TO BILL OF COMPLAINT—Filed September 13, 1937

To the Clerk of the Above-entitled Court:

Pursuant to permission obtained in open court on the 13th day of September, 1937, for certain amendments by interlineation to the Bill of Complaint on file herein, the following amendments to said Bill were allowed and ordered by said court:

1. At Page 3, Line 32, following the word "wheels" shall be inserted the following: "in convoy with other caravaned automobiles", so that the sentence in which said interlineation shall be made shall read as follows:

"That prior to July 1, 1937, the plaintiff Paul Gray, Inc., purchased in Detroit, Michigan, a certain 1937 Ford De-Luxe Model 78 Club Coupe bearing a 1937 Michigan license No. X98879, and caused the same to be driven on its own wheels in convoy with other caravaned automobiles from the said point of purchase into the State of California where it crossed over the California state line on or about July 6, 1937, at Yermo Station No. 8, and thence driven on its own

wheels to its destination in Los Angeles, California, for the purpose of resale; * * *"

[fol. 28] (2) At Page 5, Line 11, following the word "vehicle" shall be inserted the following "and any other vehicles theretofore or thereafter caravaned within the provisions of said Chapter 788", and in Line 12, Page 5, following the word "for" shall be inserted "each such", striking the words "the said", and in Line 14, Page 5, following the word "permit" shall be inserted "on said Ford Coupe" so that that portion of the sentence, commencing on Line 6, Page 5, containing the aforementioned changes and interlineations shall read as follows: "* * * that on July 9, 1937, the said defendant Howard E. Deems, through his agents, servants and employees, in writing demanded that the said plaintiff make application forthwith to the Department of Motor Vehicles at Sacramento, or one of its regularly established offices, for caravan permits covering the aforementioned vehicle and any other vehicles theretofore or thereafter caravaned within the provisions of said Chapter 788, and further demanded that the said plaintiff pay a charge of Fifteen Dollars ($15.00) for each such permit, plus a fifty per cent (50%) penalty of Seven and 50/100 Dollars ($7.50) for not having obtained the permit on said Ford Coupe according to law prior to the entry of the vehicle into California."

Respectfully submitted, Tripp, Penney & Callaway,
by D. Paul White, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 29] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed September 20, 1937

Come Now the defendants above named and answer the complaint herein, as amended by interlineation pursuant to permission granted by the court, as follows:

I

Answering Paragraph X of said complaint each of said defendants admits that each of the plaintiffs from time to

time purchases motor vehicles which have previously been registered in a state other than the State of California and [fol. 30] cause the same to be caravaned into the said state from other states on their own wheels or in tow of some motor vehicles for the purpose of resale.

Further answering said paragraph, each of said defendants alleges that he has no information or belief upon the subject sufficient to enable him to answer the remaining allegations in said paragraph set forth, and, placing his denial upon that ground, each of said defendants denies each and every allegation in said remaining portion of said paragraph.

II

Answering Paragraph XI of said Complaint, each of said defendants alleges that he has no information or belief upon the subject sufficient to enable him to answer the following allegations in said paragraph set forth, to-wit:

"that the transportation and moving of the automobiles in the manner aforesaid into the State of California over its public highways is necessary to the continued conduct of the business of said plaintiffs as automobile dealers, and if said defendants be permitted to carry out their aforementioned threats and intention and to enforce against these plaintiffs the provisions of said statute, and unless said defendants, their deputies, servants, agents and employees, be enjoined and restrained from so doing, these plaintiffs will suffer irreparable loss and injury and their said businesses will be destroyed and the rights of said plaintiffs to carry on their said businesses and the protection guaranteed [fol. 31] to them by the provisions of Section 8 of Article I and by the provisions of the 14th Amendment to the Constitution of the United States will be violated and destroyed."

and placing his denial upon that ground, each of said defendants denies each and every allegation in said portion of said paragraph set forth.

III

Answering Paragraph XIII of said Complaint each of said defendants denies each and every allegation in said paragraph set forth, and in this connection each of said defendants alleges that the transportation of automobiles

in caravans over and upon the public highways of the State of California, for the purpose of sale, constitutes a distinct class of business of considerable magnitude; that large numbers of such cars move over the highways in caravans or processions, many of such cars being in units of two coupled together by towbars or other means; that each unit is in charge of a single driver, who operates the forward car and thus controls the movement of both cars by the use of the mechanism and brakes of one; that the drivers of such cars are not regularly employed in such occupation, but are casually engaged at the point where the transportation commences; they usually serve without pay or with small remuneration, and bear their own expenses, in order to secure transportation to the point of destination; said drivers have little or no interest in the business, in the vehicles which they drive, or in their employment, other than as a means of transportation, and have less regard than do other drivers, for the safety and convenience of others using the highways; that the operation of cars in caravans is of such nature that it increases the inconvenience and hazard to [fol. 32] passing traffic and to other users of the highway, and creates congestion upon the highways, in a manner which is peculiar to such type of operation; that the nature of the business and of the operation of said cars is such as to render it expedient to make special provisions for the registration, inspection and policing of caravans moving in this traffic; that the peculiar character of this traffic involves a special type of use of the highways, with enhanced wear and tear on the roads and augmented hazards to other traffic which impose on the State a heavier financial burden for highway maintenance and policing than do other types of motor car traffic; that the fees imposed by the statute involved herein are not excessive, unreasonable or arbitrary in amount in view of the foregoing facts, but constitute reasonable fees for the privilege of using the public highways of this State in the manner aforesaid, and for the purpose of reimbursing the State for the added expense which the State may incur in the collection of such fees and in the administration and enforcement of said Act, and to reimburse the State for expense incurred in administering police regulations pertaining to the operation of vehicles moved pursuant to the permits issued as authorized by said statute and pertaining to public safety upon the highways as affected by such operations; that said statute does not constitute a bur-

den upon interstate commerce or an unlawful or any discrimination against interstate commerce; that the classification of the statute in question in fact embraces only such operations as are hereinabove described, and embraces all such operations without substantial exception; that such operations constitute a separate and distinct class of use of the public highways.

[fol. 33] Wherefore, each of said defendants prays that the relief prayed for by the plaintiffs or any relief, be denied the plaintiffs herein, and that each of the defendants may go hence with their costs of suit incurred herein and such other and further relief as to the court may seem meet and proper in the premises.

U. S. Webb, Attorney General of the State of California, by John Q. Palstine, Deputy Attorney General of the State of California, Attorneys for Defendants.

[File endorsement omitted.]

[fols. 34-42] In United States District Court

[Title omitted]

Order Allowing Proposed Amendments to Bill of Complaint—September 29, 1937

It appearing to the Court that under date of September 13th, 1937, attorney for plaintiff filed Proposed Amendments to Bill of Complaint, the Court now orders that said proposed amendments be incorporated as a part of plaintiff's Complaint.

[fol. 43] In United States District Court

[Title omitted]

Interlocutory Injunction—Filed November 20, 1937

This cause came on regularly for hearing before a statutory three-judge court, convened by the Honorable George Cosgrave, United States District Judge for the Southern

District of California, Central Division, by calling to his assistance the Honorable Curtis D. Wilbur, Justice of the Circuit Court of Appeals for the Ninth Circuit, and the Honorable Leon R. Yankwich, Judge of the District Court of the United States for the Southern District of California, Central Division, pursuant to section 266 of the Judi-
[fol. 44] cial Code, upon the application of the plaintiffs in the above-entitled cause, for an interlocutory injunction, pursuant to plaintiffs' bill of complaint, praying an interlocutory and final decree enjoining and restraining the enforcement of Chapter 788 of the California Statutes of 1937, known as the "Caravan Act", by enjoining Ray Ingels, as Director of the Department of Motor Vehicles of the State of California; Howard E. Deems, as Registrar of the Department of Motor Vehicles of the State of California, and Lon W. Butler, as Manager of the Los Angeles Office of the Department of Motor Vehicles of the State of California, on the ground that said statute violates the Constitution of the United States in that it violates the provisions of Article I, Section 8, otherwise known as the "commerce clause", of said Constitution, and in contravention of the "equal protection" and "due process" clauses of the Fourteenth Amendment to said Constitution; and upon consideration of said verified bill of complaint and of the affidavits in support of and in opposition to said application, and after hearing evidence both in support of and in opposition to said application, and it appearing that said application was duly set down for hearing at 10 o'clock A. M., on the 8th day of October, 1937, and after hearing counsel, it is ordered, adjudged and decreed by said three-judge court that the defendants, Ray Ingels, as Director of the Department of Motor Vehicles of the State of California; Howard E. Deems, as Registrar of the Department of Motor Vehicles of the State of California, and Lon W. Butler, as Manager of the Los Angeles Office of the Department of Motor Vehicles of the State of California, and each of them, and their agents, servants and employees and all other persons acting under, through or by the authority of them or either of them, or by virtue of their
[fol. 45] said office, be and they hereby are jointly and severally enjoined and restrained specially and until further order of this Court from the enforcement of the provisions

of said Chapter 788 of the Statutes of 1937 of the State of California, and from the collection or attempted collection of the fees, taxes, licenses, charges or penalties therein provided for as against the plaintiffs herein;

It is Further Ordered that plaintiffs pay the sum of $15.00 to the Department of Motor Vehicles of the State of California at its office in the City of Los Angeles for each used automobile brought into the State of California for the purpose of resale, which sum shall be paid by the said plaintiffs at the time the automobile arrives at its destination or, in any event, within three days after such automobile enters the State of California. All sums which are so paid shall be retained by the said Department of Motor Vehicles in a special fund pending the final determination in this proceeding, on appeal or otherwise, of the constitutionality of the aforementioned Statute, at which time, in the event the said Statute shall be determined to be unconstitutional, the sums so paid shall be returned, upon application, to the respective plaintiffs, and in the event the said Statute shall be determined to be constitutional the said sums shall be retained by the said Department of Motor Vehicles in lieu of all fees, charges and penalties imposed upon the said plaintiffs for said automobiles by the aforesaid Statute and shall be applied according to the provisions thereof;

It is Further Ordered that a copy of this order shall be served upon each of the defendants named in said bill of complaint.

Dated, November 20, 1937.

Curtis D. Wilbur, Circuit Judge. Geo. Cosgrave, District Judge. Leon R. Yankwich, District Judge.

Approved as to form by attorney for defendants. By ——.

[fol. 46] Decree entered and recorded 11/20/37.
R. S. Zimmerman, Clerk, by Francis E. Cross, Deputy Clerk.

[File endorsement omitted.]

[fols. 47-48] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE AFFIDAVIT OF E. RAYMOND CATO, ETC.—Filed May 4, 1938

It is Hereby Stipulated between the plaintiffs, through their respective counsel Tripp, Penney & Callaway, and the defendants, through their respective counsel U. S. Webb, Attorney General by John O. Palstine, Deputy Attorney General, that the affidavit of E. Raymond Cato may be submitted in the above-entitled action, subject to the plaintiffs' motion to strike certain portions thereof; that after the Court has passed upon the motion of plaintiffs to strike said portions, that the rest of said affidavit may be considered by the Court as evidence, each party reserving an exception to the ruling of the Court on said motion.

It is Further Stipulated That the case may be submitted upon all oral testimony introduced at the hearing on the interlocutory injunction, as well as all affidavits, whether filed at the time of hearing or subsequent thereto.

Dated April 22, 1938.

Tripp, Penney & Callaway, by George Penney, Attorneys for Plaintiffs. U. S. Webb, Attorney General, by John O. Palstine, Deputy Attorney General, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 49] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO STRIKE—Filed May 4, 1938

Come now the plaintiffs by their attorneys Tripp, Penney & Callaway and move this Honorable Court to strike from the affidavit of E. Raymond Cato, the following:

I

That portion of the affidavit commencing at line 26 on page 1 and ending on line 7 of page 2, which reads as follows:

"In the years 1931 and 1932, particularly, caravaning of motor vehicles into the State of California was first called to my attention by complaints from citizens. Committees of citizens called on me in Sacramento and insisted that we stop caravaning. They complained that the caravans were a hazard on the highways. Wrecks caused by such caravans were reported, and we had numerous complaints from motorists being crowded off the highways. They asked me to stop this traffic, but we could find no law then existing under which we could stop such movement, so we made an investigation to see just what the problem was in order that legislation could be recommended to meet the problem."

for the reason that the information therein contained is hearsay, incompetent, irrelevant and immaterial.

II

That portion of the affidavit commencing at line 8 and ending on line 12 of page 2, for the reason that the said statement is a conclusion on the part of the affiant, and for the [fol. 50] further reason that the same is incompetent, irrelevant and immaterial, which reads as follows:

"By this investigation and by my subsequent observations, and by reason of my duties as Chief of the California Highway Patrol, I have become familiar with caravaning as it exists and has existed upon the public highways in the State of California."

III

That portion of the affidavit commencing at line 13 and ending on line 19 of page 2, for the reason that the said statement is hearsay and is not the best evidence, which reads as follows:

"My investigation disclosed that there were many fleets of automobiles being driven and towed into the State for the purpose of sale. These fleets or caravans ranged from 3 or 4 to 60 or 70 cars. Some of the persons caravaning cars brought them into this State for resale by themselves, either at wholesale or retail; others engaged exclusively in transporting cars into this State, in caravans, for others."

IV

That portion of the affidavit commencing with the word, "This" on line 25 and ending on line 28 of page 2, for the

reason that the statement therein contained is a conclusion on the part of affiant, which reads as follows:

"This would cause an additional traffic hazard when vehicles attempted to pass the entire fleet, resulting, in many instances, in head-on collisions, side-swiping, and upsets."

V

That portion of the affidavit commencing with the word, "This" on line 3 and ending on line 5 of page 3 for the reason that the statement therein contained is a conclusion on the part of affiant, which reads as follows:

"This would make it necessary for more cars to pass such fleets than would have occasion to pass the ordinary traffic."

VI

That portion of the affidavit commencing at line 11 and ending with the word, "California" on line 18, of page 3, [fol. 51] for the reason that the statement therein contained is hearsay, and for the further reason that the information therein contained is not the best evidence, which reads as follows:

"My investigation disclosed that the drivers of cars being brought into the State of California for the purpose of sale were not regularly employed in such occupation. Many of said drivers were under 18 years of age. They were usually casually engaged at the point where the transportation commenced and served without pay or with small remuneration, bearing their own expenses, in order to secure transportation to the point of destination in California."

VII

That portion of the affidavit commencing with the word "These" on line 18 and ending with the word "transportation" on line 21 of page 3 for the reason that the statement therein contained is a conclusion on the part of affiant, which reads as follows:

"These drivers had little or no interest in the vehicles which they were driving or in their employment other than as a means of transportation."

VIII

That portion of the affidavit commencing with the word, "It" on line 21 and ending with the word "State" on line 27 of page 3, for the reason that the statements therein contained are hearsay and conclusions on the part of affiant, and for the further reason that it is not the best evidence, which reads as follows:

"It has been the experience of my Department that these caravan drivers display less regard than other drivers for traffic regulations and for the safety and convenience of others using the highways. By the time said drivers reach California, they are usually in a nearly exhausted physical condition, and in a hurry to reach their destination in said State."

IX

That portion of the affidavit commencing with the word "On" on line 27 of page 3 and ending on line 2 of page 4 for the reason that said statement therein contained is hearsay, and for the further reason that the alleged information is not the best evidence, which reads as follows:

[fol. 52] "On many instances when such drivers have been involved in accidents, or involved in unusual delays, or have reached a point where they are satisfied to leave the caravan, the driver has abandoned the vehicle which he was driving, on or dangerously near the highway, unattended, to the hazard and inconvenience of other users of the highways."

X

That portion of the affidavit commencing with the word "It" on line 8 and ending on line 11 of page 4, for the reason that said statement therein contained is a conclusion on the part of affiant, which reads as follows:

"It is anticipated that, with the recent completion of the Feather River Highway (California Primary Highway #21), there will be considerable caravaning into Northern California over that route also."

XI

That portion of the affidavit commencing at line 26 of page 4 and ending on line 2 of page 5, for the reason that the in-

formation therein contained is hearsay, and for the further reason that it is not the best evidence and is incompetent, irrelevant and immaterial, which reads as follows:

"The same conditions have continued to exist and still exist in regard to the nature of the operations and hazard therefrom, and in regard to the persons operating said vehicles, which I found to exist as heretofore stated, in my investigation in 1931 and 1932, and the foregoing complaints, in regard to the hazards caused by caravaning, have been continuous since that time."

XII

That portion of the affidavit commencing at line 9 and ending on line 27 of page 5, for the reason that the statements therein contained are conclusions of the affiant, and for the further reason that they are incompetent, irrelevant and immaterial, and not within the issues of the instant case, which reads as follows:

"Where several cars are being driven in fleets over the highways for long distances, the safest way to handle such traffic, in order to reduce, as much as possible, congestion and hazard from such movement, is to assign traffic officers for the purpose of accompanying and convoying each such fleet to its destination. The need for such convoying is [fol. 53] accentuated when such fleets, in the course of their transportation, are required to travel for long distances over two-lane highways, principally used by high speed traffic, and also when such fleets are required to pass through small towns whose main street and only through street is such two-lane highway, and is also accentuated when such fleets are driven by persons who do not own or have any interest in the cars which they are driving, are not permanently employed in such occupation and whose sole interest in their employment or in the car which they are driving is as a means of getting to their destination in California, and is further accentuated when such drivers have been driving said cars for long distances without adequate food or sleep."

XIII

That portion of the affidavit commencing on line 28 of page 5 and ending on line 18 of page 6, for the reason that the statements therein contained are incompetent, irrele-

vant and immaterial and not within the issues of the instant case, which reads as follows:

"If the California Highway Patrol were assured of sufficient funds for this purpose, I would provide officers for the purpose of convoying every caravan of motor vehicles brought into or driven for long distances within this State for the purpose of sale. Fleets of from 3 to 10 cars could be adequately handled by one or two officers. Fleets in excess of ten cars, however, would require at least 3 officers to convoy each such fleet so as to avoid undue hazard to other traffic upon the highways.

If officers were assigned 3 to an eight-hour shift on the following highways, it would require a total of 36 officers:

9 Yuma to Los Angeles (280 miles).
9 Blythe to Los Angeles (245 miles).
9 Yermo to Los Angeles (130 miles).
(Nevada line, Highway #91, to Los Angeles 275 miles).
9 Truckee to San Francisco (220 miles).

This number of officers could adequately handle caravaning if confined to these roads and under the supervision of the Patrol."

XIV

That portion of the affidavit commencing on line 19 and [fol. 54] ending on line 28 of page 6, for the reason that the statements therein contained are incompetent, irrelevant and immaterial, which reads as follows:

"The intermittent manner in which caravans of vehicles brought into this State for the purpose of sale arrive at the border of said State, and the uncertainty as to the route which they will follow in entering the State, makes, and has made, it practically impossible to provide officers for the purpose of conveying each such caravan to its destination. To the present time, therefore, I have been attempting to avoid the hazards incident to said traffic by providing additional highway patrolmen upon the highways over which such operations are usually or are likely to be conducted."

XV

That portion of the affidavit commencing on line 2 and ending on line 6 of page 7, for the reason that the statement

therein contained is a conclusion on the part of affiant, which reads as follows:

"In this regard, it may be mentioned that persons engaged in operating cars in such a caravan probably wouldn't realize the caravan was being escorted, although other traffic would feel the benefit of the officers' assistance in passing the caravan."

XVI

That portion of the affidavit commencing with the word "On" on line 10 and ending on line 15 of page 9, for the reason that the statements therein contained are conclusions on the part of affiant, are hearsay and incompetent, irrelevant and immaterial, which reads as follows:

"On the basis of official reports of patrolmen and personal investigation, I considered that the caravaning of cars was a principal contributing cause to accidents and a major cause in the traffic density in the areas where I assigned these men. This was the reason why I assigned these additional men to these particular areas."

XVII

That portion of the affidavit commencing on line 16 of page 9 and ending with the word, "number" on line 2 of page 10, for the reason that it is incompetent, irrelevant and immaterial as to what said affiant testified at any other trial, which reads as follows:

[fol. 55] "I testified to the foregoing facts in regard to additional patrolmen added in 1935 at the hearing on November 29, 1935, before the statutory three-judge court in Los Angeles, in the case of Morf vs. Ingels, Eq. No. 759-S in the United States District Court for the Southern District of California, Central Division. At said hearing in the case of Morf vs. Ingels, I estimated that of the aforesaid men who were appointed in 1935 prior to July, 1935, the full time of approximately six of said men could probably be attributed solely to the existence of caravans on the highways. This is what I meant in my testimony in said case that from the first of the year 1935 to the 6th day of July, 1935, I put on approximately six additional men over the whole State because there were caravans. As

I also stated at said time, and as I have stated herein, the actual number of additional patrolmen assigned to highways on which caravaning was prevalent, far exceeded that number."

XVIII

That portion of the affidavit commencing with the word, "In" on line 4 and ending with the word "thereon" on line 9 of page 10 for the reason that the statement therein contained is a conclusion on the part of affiant, which reads as follows:

"In other words, all of said officers so assigned undoubtedly devoted a portion of their time to the regulation of traffic other than caravans, but it was necessary to have all of these additional men available on said highways because of the caravan traffic thereon."

XIX

That portion of the affidavit commencing with the word "In" on line 9 and ending with the word "employed" on line 17 of page 10 for the reason that the statements therein contained are incompetent, irrelevant and immaterial and not within the issues of the instant case, which reads as follows:

"In fact, if additional funds had been available for that purpose, I would have assigned to said highways and to other highways upon which caravaning occurs, many more patrolmen, as the cars driven in fleets as aforesaid need more supervision by reason of the character of the drivers thereof, than is necessary for the same volume of ordinary traffic. These additional patrolmen were retained throughout 1935 and 1936 and are still so employed."

XX

That portion of the affidavit commencing on line 18 and ending on line 22 of page 10, for the reason that the state-
[fol. 56] ments therein contained are incompetent, irrelevant and immaterial and not within the issues of the instant case, which reads as follows:

"Furthermore, as I also testified at the aforesaid hearing in the case of Morf vs. Ingels, in addition to employing the aforesaid officers, I anticipated employing additional

men. Since that hearing, and as funds have been made available, this anticipation has been realized."

XXI

That portion of the affidavit commencing with the word "Again" on line 6 and ending on line 22 of page 11, for the reason that the statements therein contained are conclusions on the part of affiant, and for the further reason that the same are incompetent, irrelevant and immaterial, which reads as follows:

"Again, it cannot be said what portion of their time is devoted to caravan traffic. It is true, however, that as normal traffic increases, the hazards and traffic problems caused by caravaning increase in even greater degree. In other words, the problems caused by caravaning are accentuated when such operations are conducted over densely traveled two-lane highways, and the number of additional patrolmen that are necessary is likewise accentuated and increased when caravaning is also conducted on said highways. The moneys which are being, and which it is anticipated will be derived under the provisions of the Caravan Act of 1937 are being and will be used and are necessary for the purpose of providing these additional patrolmen. If the income under said act becomes insufficient or if said act is held unconstitutional, it will be necessary to find funds from other sources to maintain these officers in the Patrol so long as caravaning operations continue."

XXII

That portion of the affidavit commencing on line 16 of page 12 and ending on line 10 of page 13, for the reason that the statements therein contained are incompetent, irrelevant and immaterial and not within the issues of the instant case, which reads as follows:

"In addition to the additional men required for patrolling the highways by reason of the caravaning operations into this State, it is and has been necessary to devote considerable time and expense to the collection of the fees provided for by the Caravan Acts. Continually since 1935, when the first Caravan Act went into effect, many persons [fol. 57] caravaning vehicles into this State for the purpose of sale have attempted by various means to avoid the pay-

ment of said fees. Often, instead of following the usual routes entering the State, on which routes border patrol stations were maintained by the California Highway Patrol, caravans of cars have been driven into the State over routes which, although more circuitous, avoid said stations. It has therefore been necessary to place patrolmen on these highways. These men devote a part of their time to the regulation and supervision of any caravan traffic which may seek to enter the State by such route, part of their time to the enforcement of the provisions of the Caravan Act, requiring the obtaining of permits, and the remainder of their time to general traffic enforcement. It is impossible to state what portion of their time is spent in each of these respective duties. However, were it not for the caravans which are sometimes driven over such routes, and for the fact that many more caravans would be driven over said routes if a patrolman were not maintained thereon, it would not be necessary to maintain such patrolmen on said routes."

XXIII

That portion of the affidavit commencing on line 11 and ending on line 22 of page 13, for the reason that the statements therein contained are incompetent, irrelevant and immaterial and not within the issues of the instant case, which reads as follows:

"In order to enforce the collection of the fees provided for by the Caravan Acts which were adopted in 1935 and 1937, it also has been necessary to employ additional men at the border stations on the principal highways entering the State of California. These men, in addition to providing a check upon the cars actually caravaned into this State, are instructed to and do advise the drivers of said cars, particularly in regard to the highways over which they propose to drive, in regard to the hazards thereon in connection with such fleet movement, and are instructed to and do inspect said cars to see that they have the safety devices required by the laws of the State of California."

XXIV

That portion of the affidavit commencing on line 23 and ending on line 29 of page 13, for the reason that the state-

ments therein contained are unintelligible and not within the issues of the instant case, and for the further reason that the said statement is incompetent, irrelevant and immaterial, in that the number of officers placed at the various stations are not shown to have been so placed because of caravaning, which reads as follows:

[fol. 58] "The number of additional men assigned to the respective Border Stations since 1935 is as follows:

Yuma	2
Yermo	2
Blythe	2
Daggett	2
Truckee	1"

XXV

That portion of the affidavit commencing with the word, "The" on line 8 and ending on line 13 of page 14, for the reason that the statements therein contained are conclusions of the affiant, which reads as follows:

"The attention so required by such cars entering the State of California is much greater and involves a greater unit cost than is incident to the routine issuance of a temporary non-resident permit to ordinary non-resident traffic or the issuance of the regular resident registration certificates."

XXVI

That portion of the affidavit commencing at line 14 and ending on line 17 of page 14, for the reason that the statements therein contained are incompetent, irrelevant and immaterial and not within the issues of the instant case, and for the further reason that the last sentence of said statement is a conclusion on the part of affiant, which reads as follows:

"We now have three patrolmen assigned to investigate registrations suspected of caravaning into the State of California for the purpose of sale. These men are necessary for this purpose."

XXVII

That portion of the affidavit commencing at line 18 and ending on line 23 of page 14, for the reason that the state-

ments therein contained are incompetent, irrelevant and immaterial, which reads as follows:

"Also, within the California Highway Patrol, while we have not employed any additional clerical help at the principal offices of the Motor Vehicle Department because of [fols. 59-60] the caravaning of cars into the State, there have been two additional clerks assigned to that particular duty, that is, to the clerical work of enforcing said Caravan Act."

Dated May 3, 1938.

Tripp, Penney & Callaway, by George Penney, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 61] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION TO STRIKE—May 4, 1938

This cause coming on at ten o'clock a. m. for further final hearing; George Penney, Esq., appearing for the plaintiffs; John O. Palstine, Deputy Attorney General for the State of California, appearing for the defendants; no court reporter being present;

It is ordered that the final hearing proceed, whereupon, Attorney Penney moves to strike portions of affidavit of E. Raymond Cato and argues in support thereof, the motion being thereupon submitted, and exception to be noted on each ruling on the separate parts of the motion for each party, which is adverse to him; and Attorney Penney argues to the Court regarding the unconstitutionality of the Act under consideration;

At 11:12 a. m. Attorney Palstine argues to the Court, arguing for the constitutionality of the Act; at 12:05 p. m. Attorney Penney argues in reply;

And thereafter, the Court makes a statement and the cause is submitted for decision. At 12:17 o'clock p. m. court adjourns.

Later the Court makes the following order:

The motion of plaintiffs to strike portions of the affidavit of E. Raymond Cato filed on behalf of defendants is denied. Exception to the plaintiffs from this ruling.

Each of the parties is requested within ten days to file a synopsis of the testimony, with particular reference to [fol. 62] the volume of caravan traffic into the state from other states, the amount of caravan traffice within each zone in each state, and the amount of such traffice between the two zones in the state.

In addition, the memorandum should show the aggregate of the cost of policing and maintaining the highways attributable to interstate caravans and how such expense should be apportioned between the two funds referred to in Section Four of the Act.

Reference should be made to book and page of affidavit or testimony on which the parties rely for statements contained in their synopses.

[fol. 63] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION—Filed July 9, 1938

Before Wilbur, Circuit Judge, Cosgrave and Yankwich, District Judges

Opinion by COSGRAVE, District Judge:

In 1935 the California Legislature passed as act that defined "caravaning" as the transportation from without the state of any motor vehicle operated on its own wheels or in tow of another vehicle for the purpose of sale to or by anyone within or without the state. The act required a special permit for caravaning for which a fee of fifteen dollars for each vehicle was charged. This money was paid into the general fund in the state treasury, "to reimburse the state for the added expense which the state may incur in the administration and enforcement of this act, and the added expense of policing the highways over which such caravaning may be conducted." 1935 Stat. 1453.

In a suit brought to restrain the enforcement of the act on the ground that it was a forbidden burden on interstate commerce, and an infringement of due process and equal

protection enjoyed under the Fourteenth Amendment of the U. S. Constitution, the plaintiffs obtained judgment in a [fol. 64] three judge District Court, Morf vs. Ingels, 14 Fed. Supp. 922, on May 5, 1936. The defendants appealed to the U. S. Supreme Court, where the judgment was affirmed, Ingels vs. Morf, 300 U. S. 290, on March 1, 1937. In its decision the Supreme Court considered only the contention that the licensing provisions burdened interstate commerce and expressly refrained from considering the question of discrimination against interstate commerce by failure of the act to exact a fee from those engaged in intrastate commerce, Ingels v. Morf, supra, 293. Appellants did not deny that the permit fee burdened interstate commerce, but urged that it was permissible for (a) the use of the highways, (b) the cost of policing the traffic, including the cost of administering the act. The court held (294) that to justify the exaction by a state of a money payment burdening interstate commerce it must affirmatively appear that it is demanded as reimbursement for the expense of providing facilities or of enforcing regulations of the commerce, which regulations are within its constitutional power. Since, under the act, all the license fees were paid into the general fund, and since no part of the general fund is applied to highway purposes, the court concluded that the fees were collected, not for the use of the highways, but for the extra expense of administering the act and policing the traffic, and since the trial court found on sufficient evidence that the fee was excessive for such purpose, the decision of the District Court holding the act invalid was upheld.

In 1937 the California Legislature repealed the 1935 act and passed an entirely new act (1937 Stat. 2253), differing in several respects from that of 1935. The license fee is still imposed on vehicles transported on their own wheels [fol. 65] for sale. The state is divided into two zones, with the result that each zone contains one of the two principal centers of population, Los Angeles and San Francisco. While a license fee is required in moving cars from one zone to the other, none is required for intrazone movement. A license fee of $7.50 is provided "as compensation for the privilege of using the public highways" of the state, and a like fee "to reimburse the state for expenses incurred in administering police regulations pertaining to the operation of vehicles moved." (Section 4.) One-half of the fees

are paid into the Motor Vehicle fund in the state treasury for the support of the Department of Motor Vehicles. In substance, the new act requires a license fee for all vehicles moved on their own wheels for sale from one of the densely populated areas of the state to another and from points outside of the state to points within either of the zones, but does not require a license fee for similar movements between points within each zone. It devotes one-half of the fee to general highway purposes and the remaining one-half to the expense of policing the traffic and enforcing the act.

Plaintiffs in the present action seek to enjoin the enforcement of the 1937 act on the grounds, among others, that it is an excessive burden on interstate commerce; that it unjustly discriminates between interstate and interzone movement of cars on the one hand, and intrazone movement on the other; that there is no reasonable relation between the charges made and the expenditures necessary.

The defendants plead, among other things, that large numbers of cars are moved in units of two coupled together, with a single driver; that drivers bring cars into the state, [fol. 66] and are irresponsible, not regular employees, are transients; that the bringing in of a number of cars in single units produces congestion of the highways, increases traffic hazards and increases the cost of the highway maintenance.

It is shown that approximately 15,000 cars are brought into California upon their own wheels for sale annually. Of this number, 3000 are brought in singly, that is each car with its driver and not in association with any others—not in convoys. 6,000 are moved singly, each car with a single driver, but in convoys of varying numbers, possibly ten to twenty. 6,000 are moved in twos, the rear car being coupled to the one in front with one driver to each such unit. The interzone moving is negligible. At the two centers of population and distribution, San Francisco in the northerly zone, and Los Angeles in the southerly zone, there is, of course, extensive sale of cars not brought into the state on their own wheels. These are distributed over an average radius of perhaps a hundred miles from each of the centers, rarely coupled together, but nevertheless in convoys and generally each car is in charge of a driver regularly employed. Distribution is also made by loading the cars on trucks that exceed in length the coupled car unit.

A general comparison between the year 1931 and the year 1937 shows:

	1931	1937
Total registrations in California	2,107,275	2,638,150
Cars of outside registry coming into the state	324,726	504,943
Total number driven into the state	649,245	1,015,886

[fol. 67] From this it appears that the 15,000 cars brought in for sale on their own wheels are not to exceed 1½% of the total number of cars coming over the border in 1937. The 3,000 cars brought in, each with its own driver and not in association with other cars, necessarily must be eliminated for it cannot be that they present anything in the nature of a problem. The remaining 12,000 cars come in convoys, say averaging 15 cars to a convoy, or 800 different processions of 15 cars each during the 365 days of the year. This is an average of 66 convoys each month over a distance that can be attained without undue haste in one day. Over a considerable portion of the distance, notably from points of entry at Yermo, Blythe, and Yuma, while the road is a two lane highway, it traverses great lengths of totally uninhabited country with no intersecting roads and with nothing in the way of congested traffic.

15,000 cars means 1½% of the total of 1,015,886 cars that cross the state borders. The testimony as to the number of men whose employment caravaning requires is indefinite and inconclusive. No one on behalf of defendants testified that caravans are actually escorted, with the exception of Captain Personius, who, while stating that he himself had gone from Truckee to Sacramento with caravans, did not know how many caravans had been assisted in his district. Mr. Cato, chief of the patrol, does not say that a single officer or employee devotes his entire time to the caravaning problem. At the most only Captain Personius and possibly two district officers do so. On the other hand, one of the plaintiffs testified that at no time was any of his considerable number of caravans ever escorted or assisted by a tr
[fol. 68] officer. It was agreed that many other witness would give similar testimony.

The officer charged with the enforcement of the act testifies that after the enactment of the law three officers were assigned to Highway 50 between Carson City, Nevada, and

Placerville, California, south of Lake Tahoe. At the same time defendants present the records of the Public Service Commission of the State of Nevada, from which it appears that during the entire eight months, beginning with January 1, 1937, and ending with August 31 of the same year, the period of greatest activity, a total of only 9 cars were brought into California for sale over Highway 50. These undisputed figures put in grave doubt the question as to whether substantial traffic problems exist by reason of caravaning.

The showing made by defendants as to the traffic problems presented by caravaning is not impressive. The number of caravaned cars compared with the total coming into the state, a negligible percentage, seems to force the conclusion that the situation presented is substantially that found by the District Court to exist in the former case, Morf vs. Ingels, 14 Fed. Supp. 922, that is, that the fee is not fixed on any basis of compensation for the regulation of the traffic.

There is practically no interzone movement. The intrazone movement of cars for sale is approximately 4,000 monthly in Zone 1. While no figures were presented, the movement in Zone 2 may be deemed to be the same. Such cars are entirely untaxed. A tax, purporting to be for the privilege of using the public highways, of $7.50 is exacted [fol. 69] with respect to every car brought in for sale on its own wheels, while no tax whatever is levied on those brought in otherwise. Those moved for sale from the point of distribution to points of sale within a zone are untaxed. While some of the features attending the so-called caravaning are absent, nevertheless, such cars are often moved in convoys with regularly employed drivers as distinguished from those casually employed. In many cases the cars are loaded on trucks that themselves exceed the length of two connected cars. They are transported through distinctly congested districts, and for considerable distances. Altogether, it is difficult to distinguish between the two systems of transportation.

The creation of the two zones, there being no interzone movement, is highly suggestive of an effort to create a distinction where none in fact exists. The effect of the act is to lay a tax for the privilege of using the highway on 15,000 cars brought in from other states on their own wheels and at the same time relieve at least five times that number from

the payment of the tax that use the public highways under substantially similar conditions within the state, but which do not happen to be brought in on their own wheels.

A tax somewhat similar was upheld in Morf vs. Bingaman, 298 U. S. 407. Such tax was levied, however, upon all automobiles transported for sale, whether intrastate or interstate. While the act attempts by creating zones to remove this objection, that attempt is plainly ineffectual, there being no interzone movement, and the result is that a fee of $7.50 is exacted for the privilege of bringing the car [fol. 70] from the state line to the point of distribution. In California, with a registration of 2,638,150 cars, this provision is nothing but discriminatory. In passing on the 1935 act, the Supreme Court expressly declined to pass upon this question (Ingels vs. Morf, supra, 293). A regulation that made a distinction between those who carry farm products for hire and those who carry other commodities has been condemned as an arbitrary distinction by the Supreme Court, Smith vs. Cahoon, 283 U. S. 553. Since public safety was the ultimate object, the distinction was held to be discriminatory, as not based on anything having relation to the purpose for which it was made (567). The same condition seems to exist here.

The Tennessee statute considered in Interstate Transit, Inc. vs. Lindsey, 283 U. S. 183, was held invalid because it was evident that the tax was laid for the privilege of doing business and not a compensation for the use of the highways. The tax, laid on interstate busses, was defended as a reasonable compensation for the use of the highways. The Court uses what appears to be quite pertinent language:

"But since a State may demand of one carrying on an interstate bus business only fair compensation for what it gives, such imposition, although termed a tax, cannot be tested by standards which generally determine the validity of taxes. Being valid only if compensatory, the charge must be necessarily predicated upon the use made, or to be made, of the highways of the State. Clark v. Poor supra. In the present act the amount of the tax is not dependent upon such use. It does not rise with an increase in mileage travelled, or even with the number of passengers actually carried on the highways of the State. Nor is it related to the degree of wear and tear incident to the use of motor vehicles of different sizes and weights, except in so far as this is

indirectly affected by carrying capacity. The tax is proportioned solely to the earning capacity of the vehicle. Accordingly, there is here no sufficient relation between the measure employed and the extent or manner of use, to justify holding that the tax was a charge made merely as compensation for the use of the highways by interstate [fol. 71] buses." 190.

Even in South Carolina State Highway Department v. Barnwell Brothers, Inc., et al, decided on February 14, 1938, the Supreme Court seriously discusses the question whether a state, in regulating the width of trucks used in interstate commerce, may not have laid an undue burden on such commerce. So long as the regulation was not discriminatory it was upheld.

"The nature of the authority of the state over its own highways has often been pointed out by this Court. It may not, under the guise of regulation, discriminate against interstate commerce. But "In the absence of national legislation especially covering the subject of interstate commerce, the state may rightly prescribe uniform regulations adapted to promote safely upon its highways and the conservation of their use *applicable alike to vehicles moving in interstate commerce, and those of its own citizens.*" Morris v. Duby, 274 U. S. 135, 143. . . . This court has often sustained the exercise of that power although it has burdened or impeded interstate commerce. It has upheld weight limitations lower than those presently imposed, *applied alike to motor traffic moving interstate and intrastate.* Morris v. Duby, supra; Sproles v. Binford, supra." (Italics supplied.)

Are we not compelled, following Morf vs. Ingels, to grant the injunction?

On the whole, it is evident that the employment of any considerable number of traffic officers to overcome problems presented by the entry of 12,000 automobiles, 6000 in twos, and the other 6,000 each with its own driver, presents no problem justifying the expenditure of a tax equaling $112,500, nor can a charge of $7.50 for the use of the highway be justified with respect to each car transported for sale when it comes from outside of the state, while nothing is charged under similar conditions within the state unless a car happens to be taken from one of the densely populated areas

[fol. 72] to the other. The situation presented seems to bring this statute within the language of the Supreme Court in passing upon the statute of the State of Washington that imposed a tax upon common carriers, decided at the same time as Morf vs. Ingels, supra:

"A law exhibiting the intent to impose a compensatory fee for such a legitimate purpose (regulation and inspection of public utilities) is prima facie reasonable. If the exaction be so unreasonable and disproportionate to the service as to impune the good faith of the law, it cannot stand either under the commerce clause or the Fourteenth Amendment." Great Northern Railway vs. Washington, 300 U. S. 154 (160).

The permanent injunction is granted.
Dated July 9th, 1938.

Curtis D. Wilbur, Circuit Judge. Geo. Cosgrave, District Judge. Leon R. Yankwich, District Judge.
(Dissenting Opinion Attached.)

[fol. 73] IN UNITED STATES DISTRICT COURT

DISSENTING OPINION—Filed July 9, 1938

YANKWICH, District Judge:

I dissent.

The California Caravan Act of 1937, (Cal. Stats. 1937, Ch. 788) having been passed to supplant the Caravan Act of 1935, voided by the courts (Morf v. Ingles, 1937, 14 Fed. Sup. 922; Ingels v. Morf, 1937, 300 U. S. 290), the challenge to it must be considered in the light of the postulate that the legislative body sought by the new Act to overcome the infirmities of the old Act. (United States v. Bekins, 1938, 82 Law Ed. (Adv. Ops.) 751) Both Acts aim to control highway transportation within the state. The power of a state so to do is beyond challenge. Its exercise would be upheld even though it impeded or burdened interstate commerce. The Supreme Court has said so repeatedly. As recently as February 14, 1938, (South Carolina State Highway Department v. Barnwell Bros., Inc., 1938, 303 U. S. 177, 189) it said:

"This court has often sustained the exercise of that power (*State control over highways*) although it has burdened or impeded interstate commerce. It has upheld weight limitations lower than those presently imposed, applied alike to motor traffic moving interstate and intrastate. Morris v. Duby, 274 U. S. 135; Sproles v. Binford, 286 U. S. 374. Restrictions favoring passenger traffic over the carriage of interstate merchandise by truck has been similarly sustained. Sproles v. Binford, 286 U. S. 374; Bradley v. Public Utilities Commission of Ohio, 289 U. S. 92, as has the exac- [fol. 74] tion of a reasonable fee for the use of the highways. Hendrick v. Maryland, 235 U. S. 610; Kane v. New Jersey, 242 U. S. 160; Interstate Busses Corp. v. Blodgett, 276 U. S. 245; Morf v. Bingaman, 298 U. S. 407; cf. Ingels v. Morf, 300 U. S. 290."

What is, however, forbidden, in the exercise of this power, is discrimination against interstate commerce, under the guise of regulation. (Interstate Transit, Inc., v. Lindsey, 1931, 283 U. S. 183).

One of the indirect aims of the Act under attack is to control certain automobile traffic which originates outside of the State. I am of the view that this result is achieved without discrimination against interstate commerce.

Instead of imposing (as did the Act of 1935) a fee on caravaning originating without the state, the new Act requires the payment of two license fees for the caravaning of automobiles between two zones within the state, whether the movement originates within or without the State. Each fee is $7.50 in amount. One is imposed "as compensation for the privilege of using the public highways." (Section 4 of the Act.) The money derived from this fee is payable into the State Highway Fund, (Section 7 of the Act) which is reserved for moneys used for the acquisition of rights-of-way and the construction, maintenance and improvements of state highways. (Cal. Stats. 1935, Ch. 29, secs. 182-183). The other fee is "to reimburse the state for expenses incurred in administering police regulations pertaining to the operation of vehicles moved pursuant to such permits and to public safety upon the highways as affected by such [fol. 75] operation." (Section 4 of the Act.) Similar declarations of purpose are contained in Section 7 of the Act.

The permit, issued upon the payment of the fees, is valid for six months and is in lieu of any other registration or

license fee or charge during this period, in which the caravaned car may be driven over the highways of the state for the purpose of sale or exchange, (Section 6 of the Act.)

The form which regulation of the traffic on state highways may take without impinging upon the commerce clause of the Constitution of the United States has been stated, generally, by Mr. Justice Brandeis in Interstate Transit, Inc., v. Lindsey, 1931, 283 U. S. 183; 185:

"While a State may not lay a tax on the privilege of engaging in interstate commerce, Sprout v. South Bend, 277 U. S. 163, it may impose even upon motor vehicles engaged exclusively in interstate commerce a charge, as compensation for the use of the public highways, which is a fair contribution to the cost of constructing and maintaining them and of regulating the traffic thereon. Kane v. New Jersey, 242 U. S. 160, 168-169; Clark v. Poor, 274 U. S. 554; Sprout v. South Bend, supra, pp. 169-170. As such a charge is a direct burden on interstate commerce, the tax cannot be sustained unless it appears affirmatively, in some way, that it is levied only as compensation for use of the highways or to defray the expense of regulating motor traffic. This [fol. 76] may be indicated by the nature of the imposition, such as a mileage tax directly proportioned to the use, Interstate Busses Corp. v. Blodgett, 276 U. S. 245, or by the express allocation of the proceeds of the tax to highway purposes, as in Clark v. Poor, supra, or otherwise. Where it is shown that the tax is so imposed, it will be sustained *unless the taxpayer shows that it bears no reasonable relation to the privilege of using the highways or is discriminatory.* Hendrick v. Maryland, 235 U. S. 610, 612; Interstate Busses Corp. v. Blodgett, 276 U. S. 245, 252; Compare Interstate Busses Corp. v. Holyoke Street Ry. 273 U. S. 45, 51." (Italics added).

The following cases indicate the variety of forms of regulations so sustained: Hendrick v. Maryland, 1915, 235 U. S. 610 (graduated license fee and requirement of non-resident to appoint agent); Packard v. Banton, 1924, 264 U. S. 140 (statute limited to cities of first class, requiring persons engaged in carrying passengers for hire in motor vehicles upon public streets to file security or insurance for payment of judgments for death or injury); Morris v. Duby, 1927 274 U. S. 135 (state order limiting maximum weight of motor

trucks and loads on highways); Clark v. Poor, 1927, 274 U. S. 554 (statute requiring extra tax on motor carriers); Interstate Busses, Inc. v. Blodgett, 1928, 276 U. S. 245, (a state tax of one cent for each mile of highway traversed by a motor bus used in interstate commerce, in addition to other taxes imposed on owner in the absence of "a showing [fol. 77] that in actual practice the tax of which it complains falls with disproportionate economic weight on it); Sproles v. Binford, 1932, 286 U. S. 374, (a statute limiting the net load of trucks); Stephenson v. Binford, 1932, 287 U. S. 251 (statute regulating carriers on highways and their rates); Continental Baking Co. v. Woodring, 1932, 286 U. S. 352, (license fee and tax on carrier of goods by motor); Morf v. Bingaman, 1936, 298 U. S. 407, (a flat tax on caravaning automobiles); South Carolina State Highway Dept. v. Barnwell Bros. Inc., 1938, 303 U. S. 177 (statute prohibiting the use on the highway of trucks exceeding certain length and weight); George B. Wallace v. Pfost, 1937, 57 Ida. 279, 65 P (2) 725, and annotations thereto in 110 A.L.R. 622 (fee on caravaning automobiles). See also Clyde Mallory Lines v. Alabama, 1935, 296 U. S. 261, in which a uniform harbor fee for vessels of certain tonnage was sustained, in the face of the constitutional inhibition against laying of duties on tonnage by the states. (Constitution of United States, Article I, Sec. 10, Cl. 3.)

The final decision on the prior Act (Ingels v. Morf, 1937, 300 U. S. 290) did not turn upon classification. The Act was denied judicial sanction because the fee exacted was found to be excessive. The case also declares that the burden of proving that the fee is excessive rests with him who attacks it. If he does not show that it exceeds a reasonable charge for the privilege of using the highway or for defraying the cost of regulating the traffic involved, his attack must fail. (See, Morf. v. Bingaman, 1936, 298 U. S. 407.)

In passing upon an attack of this character, courts disregard the fact that all the money collected as a charge may not actually be used, or be necessary for that purpose. [fol. 78] (Gundling v. Chicago, 1900, 177 U. S. 183; Clark v. Poor, 1927, 274 U. S. 554; Interstate Transit, Inc. v. Lindsey, 1931, 283 U. S. 183). Nor is it material that the litigant attacking the bill may not actually ask or receive the service for which a fee is charged. (Clyde Mallory Lines v. Alabama, 1935, 296 U. S. 261.)

These principles are expressions of sound judicial polity. Courts, in exercising the power to nullify an exaction as an unreasonable burden upon interstate commerce, should not be placed in a position of requiring a sovereign state to prove, in dollars and cents, that the exaction it makes is the exact equivalent of the damage which the particular trip may occasion to the state highway. (Kane v. New Jersey, 1916, 242 U. S. 160, 167, 168).

If the facts in the record are tested by these rules, they fail to show that the exactions of the 1937 Caravan Act are onerous or invalid.

There is no showing in the record that the exaction of a fee of $7.50 for the use of the state highway is excessive. The cases discussed have approved a flat charge, comparing it with the old flat toll charge for the use of bridges.

Certain it is that it is not up to the State of California to show that every one of these automobiles transported for business purposes does damage in that amount to the highway.

Bear in mind that the imposition, whether in the form of a tax or of a fee, is "not on *the use* of the highways but on *the privilege of using them.*" (Morf v. Bingaman, 1936, 298 U. S. 407, 412.) When this is the case, "it is immaterial [fol. 79] whether the state places the fees collected in the pocket out of which it pays highway maintenance charges or in some other." (Morf. v. Bingaman, 1936, 297 U. S. 407, 412.) And the Supreme Court has declined to invalidate an exaction, even when it was actually shown that the fund created by it exceeded what was needed for the particular purpose. (Kane v. New Jersey, 1916, 242 U. S. 160; and see, McLean v. Denver & Rio Grande R. R. Co., 1906, 203 U. S. 38, 55.)

Nor does the evidence in the record warrant the conclusion that the fee of $7.50 for added police protection and the maintenance of safety caused by this particular form of traffic is excessive or unreasonable. The problem which caravaning presents, appears from the testimony of E. Raymond Cato, Superintendent of the California Highway Patrol, whose duties are to administer the affairs of the patrol, lay plans and direct the enforcement of the motor vehicle laws of the state and other laws regulating the operation of motor vehicles upon the highways of the state. The problem was called to his attention in 1931 and 1932. Committees of citizens called on him and asked that caravaning

stop. They complained that the caravans were a hazard on the highways. Wrecks caused by them were reported. There were numerous complaints from motorists being crowded off the highways. Because there was no law to stop the traffic, an investigation was made to determine what the problem was, in order that legislation might be recommended to meet it. This investigation and Cato's subsequent observations disclosed that there were many automobiles being driven and towed into the state for the purpose of sale. These fleets and caravans ranged from three and four to sixty or seventy cars. Some of the persons [fol. 80] caravaning cars brought them into the state for resale by themselves either at wholesale or retail. Others engaged exclusively in caravaning automobiles for others. The observed caravans ran train-like, i. e., they would remain close together in a group or fleet. Often, by remaining close to each other, the cars in such fleets would not permit traffic going in the same direction to pass a single car in the fleet and thus interrupt the continuity of the fleet. This would cause an additional traffic hazard when vehicles attempted to pass the entire fleet resulting, in many instances, in head-on collisions, side-swiping and upsets. On the open highways, the fleet would not usually drive at the maximum speed allowed,—forty-five miles per hour,—as resident drivers do, but would drive at a slightly slower speed.

In general, the larger the caravan, the slower the speed would be at which it was driven. This would make it necessary for more cars to pass such fleets than would have occasion to pass the ordinary traffic. Many of the cars in the fleets were in units of two grouped together by tow-bars or other means, each unit being in charge of a single driver who operated the forward car, thus controlling the movement of both cars by use of the mechanism and brakes of the towing car. The drivers of the cars brought into the state for the purpose of sale were not regularly employed in such occupation. Many of them were under eighteen years of age. They were usually engaged casually at the point where the transportation began and served without pay or for a small remuneration, bearing their own expenses in order to secure transportation to the point of destination. They had little or no interest in the vehicles which they were driving or in their employment other than as a means [fol. 81] of transportation. They displayed less regard than other drivers for traffic regulations and for the safety and

convenience of others using the highway. By the time they reached the state, they were usually in a nearly exhausted physical condition and in a hurry to reach their destination in California. In many instances, when a driver was involved in an accident, or in an unusual delay, or had reached a point where he was satisfied to leave the caravan, he abandoned his vehicle on, or dangerously near, the highway unattended, to the hazard and inconvenience of the users of the highways.

Most of the cars caravaned into the state for sale were and are driven over United States Highways 80, 99, 60, 66, 91, 50, 395, 40, and also on California Highway Route 168. Most of these highways are, for the greater part of their length, two-lane highways traversing routes which require and have numerous curves both horizontal and vertical and grades in the road and which pass through numerous small towns which they serve as main streets and as their only through streets.

The number of caravaned cars transported for sale increased greatly from 1931 to 1936. Approximately 14,000 cars were caravaned during each of the years 1935 and 1936. In 1937, following the adoption of the California Caravan Act, the volume of the traffic decreased materially. The conditions, both as to the operation and hazards and the personnel, were before the California legislatures of 1935 and 1937, which sought to deal with the problem, and have continued unchanged to the present time. They warrant the special treatment of the problem through this type of legislation. They are akin to the conditions which the court found in Morf v. Bingaman, 1935, 298 U. S. 407, 411, [fol. 82] when it said:

"There is ample support for a legislative determination that the peculiar character of this traffic involves a special type of use of the highways, with enhanced wear and tear on the roads and augmented hazards to other traffic, which imposes on the state a heavier financial burden for highway maintenance and policing than do other types of motor car traffic. We cannot say that these circumstances do not afford an adequate basis for special licensing and taxing provisions, whose only effect, even when applied to interstate traffic, is to enable the state to police it, and to impose upon it

a reasonable charge, to defray the burden of this state expense, and for the privilege of using the state highways."

Prior to the development of the caravan method of transporting cars for sale, there was practically no fleet movement of cars upon the highways of California. There still is practically no fleet movement of cars on highways other than in connection with the transportation of cars for sale.

There is definite evidence to show that the safest way to handle the traffic is to assign traffic officers for the purpose of accompanying and convoying each fleet to its destination. The reason why it is not done generally now is the absence of funds. A system of general convoying would require a total of thirty-six officers to handle the caravaning on the main highways leading to the metropolitan areas of [fol. 83] California. This not being possible at the present time, the department has attempted to solve the problem by providing additional highway patrolmen upon the highways over which such operations are usually or are likely to be carried on.

These statements as to the actual needs are confirmed by others, and especially by the testimony of Earl W. Personius, Captain of the Highway Patrol in charge of the enforcement of the caravan law in Zone No. 2.

Thirty men have actually been placed upon the various highways, who are needed to handle the traffic situation caused by caravaning and to enforce the Act. Three men have been assigned to investigate registrations suspected of caravaning into the state of California for the purpose of sale and on which the caravan license was not paid. Additional men performing administrative functions at the border patrol station have had to be supplied. Additional clerical assistance has also been required at the Sacramento office of the Division of Registration of the Department of Motor Vehicles made necessary by the additional administrative functions. To this must be added increased supplies and transportation for the men.

On the basis of an average of 14,000 caravaned motor vehicles per year, the income of the state from the tax collected to reimburse it for this policing would amount to $104,000.00 a year. Without making a detailed computation, I am satisfied that the cost to the state, without taking into consideration expanding future needs, approximates that amount.

[fol. 84] It is true that the computations are not exact. By their very nature, they cannot be. Unless we resort to one of those highly complicated cost accounting systems in vogue in large industrial plants, it is difficult, if not impossible, to estimate definitely the time which each officer actually devotes to the problems caused by caravaning. This is especially true when the attack is made, as here, shortly after a statute goes into effect. When this is the case, it is

"*impossible then to determine whether the fees would prove to be in excess of the administrative requirement, and in this situation it is sufficient if it is shown that the charges are not unreasonable on their face.* As was said in Patapsco Guano Co. v. Board of Agriculture, 171 U. S. 345, 354, '*If the receipts are found to average largely more than enough to pay the expenses, the presumption would be that the legislature would moderate the charge.*'" (Bourjois, Inc. v. Chapman, 1936, 301 U. S. 183, 187.) (Italics added.)

When an Act is challenged on this ground, all that need be shown is that there was warrant in fact, for the imposition of the particular exaction. In determining this, we must, in the end, rely, as, no doubt, the Legislature did, upon the opinion of those charged with the enforcement of the motor vehicle laws of the state as to what additional personnel was necessary to meet the problem and as to the time which others, now otherwise employed, must devote to the duties flowing from the enforcement of this Act. A comparison of the number of automobiles in this traffic with the whole number on the state's highways leads nowhere. The problem created is special and unrelated to mere numbers. [fol. 85] Nor can we, in dealing with a traffic movement of this character, set it apart and try to trace directly every one of its effects. We must consider the gestalt, or the configuration, which is formed by the entire traffic problem which this particular traffic movement helps complicate, and we must assume that the legislature did so in determining upon the particular legislation. The facts creating the problem were placed before the legislature, before the Act was passed. The facts relating to the expenditures traceable to the enforcement of the Act since its enactment are before us. The legislature, in setting the fee, could but approximate the cost from the nature of the problem as it then existed. The evidence in the record warrants the conclusion that it approximated correctly, and that the fee of

$7.50 is not excessive, but is a reasonable compensation to reimburse the state for the additional expenditure it has incurred in attempting to handle the administrative and police problems which this form of traffic has created.

The burden of proving the contrary is upon the plaintiff. (See: Hendrick v. Maryland, 1915, 235 U. S. 610, 624; Interstate Busses Corp. v. Blodgett, 1928, 276 U. S. 245, 251; Ingels v. Morf, supra, at p. 294) If,—because of the generality of certain statements by enforcing officers, caused by the absence of a definite method of measuring the allocation of every item of money that may be derived from this source, we strike down the statute,—we would change the burden of proving excessiveness, now lying on him who attacks a statute into the burden of proving the contrary and shift it to the state. (See Footnote 1.)

In approaching legislation of this character, we should [fol. 86] bear in mind that

"The judicial function under the commerce clause as well as the Fourteenth Amendment, stops with the inquiry whether the state legislature in adopting regulations such as the present has acted within its province, and whether the means of regulation chosen are reasonably adapted to the end sought." (South Carolina State Highway Dept. v. Barnwell Bros., Inc. 1938, 303 U. S. 177, 190.)

Little need be said on the alleged discrimination between intra-zone and inter-zone caravaning and between inter-zone caravaning and non-resident automobilists who may enter the state without the payment of a caravaning license.

It is no one's privilege to use state highways for private gain. They are, as the Supreme Court said in Stephenson v. Binford, 251, 264:

"public property; (that) their primary and preferred use is for private purposes; and (that) their use for purposes of gain is special and extraordinary, which, generally, at least, the legislature may prohibit or condition as it sees fit."

The non-resident automobilists, if they come to California, do so for business or pleasure, or as prospective residents. Tourism is a great California industry. The benefits which the State derives from non-resident automobilists coming to the State, would warrant their being placed in a

class by themselves and having extended to them the privilege of the use of the State's highways upon conditions dif- [fol. 87] ferent from those extended to persons driving over the highways of the state caravaned automobiles for sale. The caravaning of automobiles within a particular zone is done chiefly by large automobile manufacturers and is performed by regular employees who are residents of the state. The fact that caravaned automobiles are manned by persons, who, in most instances, perform the act of caravaning for the specific occasion of a specific sale,—that, in many instances, the drivers are not residents of the state,—furnishes a sufficient foundation for a distinct classification. There is more ground for a distinction based upon the casual character of the employment and of the type of persons employed, than there is in distinguishing, for licensing purposes, itinerant merchants from regular merchants, a classification which has been upheld uniformly. (See, Emert v. Missouri, 1895, 156 U. S. 296; Baccus v. Louisiana, 1914, 232 U. S. 334; Ex parte Gilstrap, 1915, 171 Cal. 108, 152 P. 42).

There is no hard and fast constitutional rule by which classifications can be judged. Only those manifestly arbitrary will be denied sanction.

As said by Mr. Justice Sutherland in Bayside Fish Co. v. Gentry, 1936, 297 U. S. 422, 429:

"It never has been found possible to lay down any infallible or all-inclusive test by the application of which it may be determined whether a given difference between the subjects of legislation is enough to justify the subjection of one and not the other to a particular form of disadvantage. A very large number of decisions have dealt with the matter; and the nearest approach to a definite rule which can [fol. 88] be extracted from them is that, while the difference need not be great, the classification must not be arbitrary or capricious, but must bear some just and reasonable relation to the object of the legislation. *A particular classification is not invalidiated by the Fourteenth Amendment merely because inequality actually results. Every classification of persons or things for regulation by law produces inequality in some degree; but the law is not thereby rendered invalid,* (Atchison, T. & S. F. R. Co. v. Matthews, 174 U. S. 96, 106) *unless the inequality produced be actually and palpably unreasonable and arbitrary.* Arkansas Natural Gas Co. v. Railroad Commission, 261 U. S. 379, 384, and cases cited." (Italics added.)

(And see, Joseph S. Finch & Co. v. McKittrick (D. C. Mo. 1938) 23 Fed. Sup. 244).

The sporadic as distinguished from the permanent use of a highway, the occasional as contrasted with the regular engagement in transportation, and the personal as differentiated from the commercial use of a highway, have been sanctioned as constitutionally valid criteria in establishing classifications. Illustrative are the following: An act differentiating between a common carrier operating over regular routes between fixed termini and other carriers. (Bekins Van Lines v. Riley, 1929, 280 U. S. 80); an ordinance requiring that persons engaged in the business of letting out automobiles to be driven by others pay a license fee and deposit an insurance policy for the protection of persons and property against negligent operations by the les- [fol. 89] sees and not making a similar requirement from others. (Hodge Co. v. Cincinnati, 1932, 284 U. S. 335); an ordinance taxing motor carriers on the basis of gross ton miles, but exempting those operating wholly within a city or village and private carriers. (Continental Baking Co. v. Woodring, 1932, 286 U. S. 352); a statute imposing an annual license fee on private carriers by motor vehicle and exempting vehicles engaged in hauling farm products between certain points, and agricultural and dairy products owned by producers. (Aero Mayflower Transit Co. v. Georgia Public Service Commission, 1935, 295 U. S. 285); a statute imposing a license fee for the transportation of persons or property on highways by motor vehicles for hire or compensation, but excluding vehicles operating exclusively within incorporated cities or towns and the like, (Ex parte Bush, 1936, 6 Cal. (2d) 43; 56 P. (2d) 511); a statute which gives preference to vehicles used in the business of their owners over those used by common carriers. (Bradley v. Public Utility Commission of Ohio, 1933, 289 U. S. 92). In the case last cited, the Court said:

"It is contended that the statute as applied to the plaintiff violates the equal protection clause of the Fourteenth Amendment. * * * One argument is that the statute discriminates unlawfully against common carriers in favor of shippers who operate their own trucks. In dealing with the problem of safety of the highways, as in other problems of motor transportation, *the State may adopt measures which favor vehicles used solely in the business of their*

owners, as distinguished from those which are operated [fol. 90] *for hire by carriers who use the highways as their place of business.*" (Bradley v. Public Utility Commission, 289 U. S. 92, 97.) (Italics added.)

Even if it be conceded that the enforcement of the statute may result in an advantage to residents of the state selling used automobiles, we should not, because of this, deny validity to it. The legislation being clearly within the state's power, neither legislative motives nor legislative polity should call for judicial interference. As said by the Supreme Court in South Carolina State Highway Dept. v. Barnwell Bros. Inc., 1938, 303 U. S. 177, 190, 191:

"When the action of a legislature is within the scope of its power, fairly debatable questions as to its reasonableness, wisdom and propriety are not for the determination of courts, but for the legislative body, on which rests the duty and responsibility of decision. Jacobson v. Massachusetts, 197 U. S. 11, 30; Laurel Hill Cemetery v. San Francisco, 216 U. S. 358, 365; Price v. Illinois, 238 U. S. 446, 451; Hadacheck v. Sebastian, 239 U. S. 394, 408-414; Thos. Cusack Co. v. Chicago, 252 U. S. 526, 530; Euclid v. Ambler Realty Co., 272 U. S. 365, 388; Zahn v. Board of Public Works, 274 U. S. 325, 328; Standard Oil v. Marysville, 279 U. S. 582, 584. *This is equally the case when the legislative power is one which may legitimately place an incidental burden on interstate commerce. It is not any the less a legislative power committed to the states be-* [fol. 91] *cause it affects interstate commerce, and courts are not any more entitled, because interstate commerce is affected, to substitute their own for the legis- judgment.*" (Italics added.)

Hence my conviction that the challenged Act is a valid exercise of the police power of the state, which does not transgress the commerce clause (Constitution of the United States, Art. I, Sec. 8) or the equal protection or due process clauses of the Constitution of the United States. (Constitution of the United States, Fourteenth Amendment, Cl. 1.)

Dated this 9th day of July, 1938.

Leon R. Yankwich, United States District Judge.

(Note to Text Follows.)

[fol. 92] Footnote 1:

In Great Northern Ry. Co. v. Washington, 1936, 300 U. S. 154, from which the main opinion quotes, there is the following statement which would seem to place on the state the burden of proving the reasonableness of the charges:

"The court thought the plaintiff had the burden of showing that the sums exacted from rail carriers substantially exceeded the amounts expended for regulation and supervision, and the proofs offered were insufficient to shift the burden to the defendant. *This view was erroneous.* Foote & Co. v. Stanley, 232 U. S. 494." (P. 162) (Italics added).

The opinion was by a divided court. The minority opinion written by Mr. Justice Cardozo and concurred in by The Chief Justice, and Justices Brandeis and Stone, insisted that the burden is the other way:

"*Still the burden is on the railroads to satisfy the court that what was contributed by them was more than what was expended for their account, since otherwise the common pot may have been a help and not a hurt.* That burden was not discharged. Far from being discharged, there was a disclaimer of any attempt or purpose to discharge it. And so the case must fail." (Pp. 168-169.) (Italics added.)

Even if the majority opinion be taken as controlling, the case is clearly distinguishable. The court there was dealing with a state tax levied directly on interstate carriers, [fol. 93] to cover state inspection and supervision. In other words, the court was dealing with a direct levy on interstate commerce. Here we are dealing with a levy primarily intrastate, which may affect interstate commerce only indirectly. When this is the case, the burden to prove excessiveness is always on those who challenge the levy. It never shifts. Great Nrothern Ry. Co. v. Washington, supra, was decided on February 1, 1937. On April 26, 1937, the Supreme Court in Bourjois, Inc. v. Chapman, 1937, 301 U. S. 183, 187-188, speaking unanimously, through Mr. Justice Brandeis, who had been one of the dissenters in the former case, distinguished it in the manner just stated, saying:

"Here, the statute operates *directly only upon intrastate commerce. Where interstate commerce is only indirectly*

affected, it rests upon one challenging the legislation to show actual undue burden upon such commerce. See Pacific Telephone & Telegraph Co. v. Tax Commission, 297 U. S. 403. The mere fact that the fees imposed might exceed the cost of inspection is immaterial." (Italics added.)

However, I am of the view that even if the burden is on the state to show that the exactions under this statute are not excessive, it has met it.

[File endorsement omitted.]

[fol. 94] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed October 19, 1938

The above-entitled action having come on regularly, on the 4th day of May, 1938, at the hour of ten o'clock A. M., before the Honorable Curtis D. Wilbur, Circuit Judge, the Honorable George Cosgrave and the Honorable Leon R. Yankwich, District Judges, sitting as a statutory three-judge court in pursuance of Statute 366 of the Judicial Code, as amended, for hearing upon the application of the above-named plaintiffs for a permanent injunction, Tripp, [fol. 95] Penney & Callaway by George Penney, Esq., appearing as attorneys for the plaintiffs, and U. S. Webb, Attorney General of the State of California, by John O. Palstine, Deputy Attorney General, appearing as attorneys for the defendants, and evidence, both oral and documentary, having been offered and received, and the cause having been submitted, and the court being fully advised;

Now, Therefore, in support of its determination in regard to the issuing of a permanent injunction, the Court finds as follows:

Findings of Fact

It is true that:

I

The plaintiffs Paul Gray, Inc., Hirsch Mercantile Company, Kelley Kar Company, National Motor Car Company

and Motor Trading Company are corporations duly organized and existing under and by virtue of the laws of the State of California.

II

The plaintiffs Ray Culbertson and Jack Parmilee are copartners doing business under the firm name and style of Culbertson & Parmilee Motor Sales; that the plaintiffs Don Cardiff and F. A. Rodgers are copartners doing business under the firm name and style of Cardiff & Rodgers; that the plaintiff Melvin E. Snyder is an individual doing business under the firm name and style of United Auto Sales; that the plaintiff Samuel A. Klein is an individual doing business under the firm name and style of Klein Auto Company; and that all of said plaintiffs have their principal place of business in the County of Los Angeles, State of California.

III

The defendant Ray Ingels was and is the duly appointed, qualified and acting Director of the Department of Motor Vehicles of the State of California; that the defendant How- [fol. 96] E. Deems was and is the duly appointed, qualified and acting Registrar of the Motor Vehicle Department of the State of California; and that the defendant Lon W. Butler was and is the duly appointed, qualified and acting Manager of the Los Angeles Office of the Department of Motor Vehicles of the State of California.

IV

That the amount involved in the within action is in excess of the sum of Three Thousand Dollars ($3,000.00), exclusive of interest and costs.

V

That the 1937 session of the California Legislature enacted a statute known as "Chapter 788 of the California Statutes of 1937," which was codified by the same Legislature and included in the Vehicle Code of the State of California, which said Act reads, as follows:

"An act to regulate the caravaning of vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of vehicles in caravan

for the privilege of using the public highways and for the cost of regulating persons engaged in caravaning and providing such fees shall be a lien and for the enforcement of such liens and the collection and disposition of such fees and imposing penalties for violation thereof, and to repeal an act entitled 'An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term 'caravaning' and providing for the licensing of motor vehicles in caravan and imposing penalties for violation thereof,' approved July 6, 1935, declaring the urgency thereof, and providing that it shall take effect immediately.

The people of the State of California do enact, as follows:

Section 1. The term "caravaning" as used in this act shall mean the transportation of any vehicle of a type subject to registration under the Vehicle Code, operated on its own wheels, or in tow of a motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, purchaser or prospective purchaser, whether such agent, dealer, purchaser or prospective purchaser may be located within or without this state.

Section 2. The term "dealer" when used in this act shall [fol. 97] mean and include every individual, partnership, corporation or trust whose business in whole or in part is that of caravaning new or used vehicles as herein defined, or of selling or exchanging new or used vehicles, and shall include every agent or representative of every such person engaged in such business, except that nothing herein contained shall be construed to require the performance of any act or the payment of any fee by any agent or representative which has previously been performed or paid by his principal.

Section 3. No person, firm or corporation, shall use any highway in this State for caravaning vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California upon application at its office in Sacramento or any of its regularly established branch offices other than stations at the State boundary line a special permit as to each vehicle so caravaned, for use of the highways of this State in caravaning such vehicles, which permit shall be displayed by posting the

same upon the windshield of such vehicle or in other prominent place thereon where it may be readily legible.

Section 4. As a condition precedent to the use of the highways of this State for the purpose of caravaning and the issuance of any special permit provided for in the previous section of this act, the Motor Vehicle Department of the State of California shall charge and collect, for each vehicle for which a caravan permit may be issued whether such vehicle be operated under its own power or in tow of a motor vehicle, a fee of seven and fifty one-hundredths dollars as compensation for the privilege of using the public highways of this State and a fee of seven and fifty one-hundredths dollars to reimburse the State for expense incurred in administering police regulations pertaining to the operation of vehicles moved pursuant to such permits and to public safety upon the highways as affected by such operation.

Section 5. Permits issued pursuant to the provisions of this act shall be valid for a period of six months after date of issuance and shall be valid only in the hands of the original permittee but shall not authorize the operation of any vehicle other than that for which originally issued. Such permits shall contain such information and be in such form and shall be issued under such rules and regulations as may be prescribed by said Motor Vehicle Department.

Section 6. The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this State by such vehicle during the period that such vehicle may be operated for the purpose of sale or exchange under and solely in accordance with such permit upon the public highways of this State; provided, however, that nothing in this section shall exempt the owner or operator of such vehicle from compliance, except with respect of fees or license charges, with all laws of this State now or hereafter adopted, [fol. 98] relating to safety in the use of the public highways.

Section 7. All fees from the issuance of permits provided for under this act shall be collected by the Motor Vehicle Department. One-half of such fees shall be paid into and become a part of the motor vehicle fund in the State treasury, and are hereby appropriated out of said fund for the support of the Department of Motor Vehicles; *provided, however, that should a motor vehicle support fund be cre-*

ated in the State treasury said one-half of such fees shall be paid into and become a part of said motor vehicle support fund. The remainder of such fees shall be paid into and become a part of the State highway fund in the State treasury. The moneys so derived by the State are intended as compensation for the privilege of using the highways of this State and to reimburse the State treasury for the added expense which the State may incur in the collection of such fees and in the administration and enforcement of this act and the expense of policing the highways over which such caravaning may be conducted.

Section 8. The provisions of this act shall not apply to the transportation of motor vehicles *between points* within Zone 1 or *between points* within Zone 2, which zones are hereby defined as follows:

Zone 1.—That part of the State of California lying within the counties of San Diego, Imperial, Orange, Riverside, San Bernardino, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Kern and Inyo;

Zone 2.—That part of the State of California not included within Zone 1 as herein defined.

Section 9. Every dealer in vehicles shall report to and list with the Motor Vehicle Department on forms to be prescribed by such department and in accordance with rules in regard thereto promulgated by such department, each vehicle received, held or offered by him for sale which has been caravaned over the public highways of this State. Such report and listing shall be made forthwith upon the receipt of such vehicle. Such report, among other things, shall show the number of the caravan permit authorizing the operation of the vehicle covered in such report. In the event no permit has been secured for such operation payment of the required fees and penalty shall be made to the department and shall accompany such report. In the event permit fees required by this act are not paid when due a penalty of fifty per cent of such fees for each such vehicle shall be assessed and collected by the department.

Section 10. On demand of the Motor Vehicle Department, any dealer in vehicles shall furnish to the department evidence as to the origin of any vehicle not previously registered in this State which is held or offered by him for sale,

and evidence of the manner in which such vehicle was transported to the place in which it is or has been held or offered for sale. It shall be prima facie evidence that a vehicle not [fol. 99] previously registered in this State is or has been transported for purpose of sale if it is exchanged, sold, or offered for sale within thirty days after it has been operated over the public highways of this State.

Section 11. The permit fees provided for herein shall be due and payable in advance of the operation upon the public highways of any vehicle for which such permit is required and shall be a lien against the vehicle for which they are due during the time such vehicle is held for sale or offered for sale or resale.

Section 12. The department shall collect the permit fees and enforce the liens provided for herein by seizure of the vehicle or vehicles upon which such fees are a lien from the person or persons in possession thereof, if any, and by sale of such vehicle. The seizure and sale herein authorized may be made at any time after such fees become due and shall be conducted and carried out by the department in the same manner as is provided by law for the seizure and sale of personal property by the assessor for the collection of taxes due on personal property.

Section 13. Violation of any of the provisions of this act is a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Section 14. If any section, paragraph, clause or phrase of this act should be held to be unconstitutional by any court of competent jurisdiction such holding shall not affect any other part of this act and it is hereby declared to be the intention of the Legislature that no section, paragraph, sentence, clause or phrase of this act has been an inducement to the enactment of any other part hereof.

Section 15. An act entitled "An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term 'caravaning' and providing for the licensing of motor vehicles in caravan and imposing penalties for violation thereof," approved July 6, 1935, is hereby repealed.

Section 16. This act is hereby declared to be an urgency measure within the meaning of section 1 of Article IV of the Constitution, necessary for the immediate preservation of the public peace, health and safety and as such shall take effect immediately.

The following is a statement of facts constituting such necessity:

Experience has shown that, due to climatic conditions, the caravaning of vehicles occurs almost exclusively during the spring and summer months. It is necessary, therefore, in order to regulate caravan vehicles, the number of which is now increasing, that this act shall take effect immediately."

[fol. 100]

VI

That the plaintiffs herein, and each of them, are engaged in the business of buying, selling and trading motor vehicles and have been so engaged for many years; that said plaintiffs, in the conduct of their respective businesses purchase motor vehicles which have been previously registered in states other than California and cause the same to be caravaned into the State of California on their own wheels or in tow of other motor vehicles for the purpose of resale. The Court finds, in this connection that approximately fifteen thousand vehicles enter the State of California each year for the purpose of sale; that of these fifteen thousand vehicles three thousand of the same are brought into the State of California each in charge of a separate driver and not in convoy with other cars; that of the remaining twelve thousand cars, six thousand cars are moved singly, each car with a separate driver, but in convoy of varying numbers between ten and twenty; that the remaining six thousand cars are moved in two's the rear car being coupled to the one in front, with one driver to each unit.

VII

The Court further finds that the movement of cars between zones is negligible. In the intra-zone movement of cars for sale in Zone 1, the Court finds that there are approximately four thousand cars transported monthly and using the highways in said zone, which said cars are often moved in convoys, many of which are transported through distinctly congested districts and for considerable distances.

VIII

That the plaintiffs and each of them have built up substantial businesses which cannot be carried on without the purchase of automobiles from outside of the State of California and their subsequent resale in the State of California, and that the imposition of a fee of $15 for a permit from the [fol. 101] Department of Motor Vehicles of the State of California for each of the cars so caravaned into the State of California would seriously impair the business of the said plaintiffs.

IX

That the number of caravan cars brought into the State for the purpose of sale and subject to the imposition of a fee of $15 creates no traffic problem differing in any way from the traffic problems created by the movement of cars intrazone, which said latter cars are not subject to the imposition of said permit fee of $15.

X

That the defendants, their agents, servants and employees, have demanded of the plaintiffs from the 1st day of July, 1937, the sum of $15 as a permit fee for each car purchased outside of the State of California and driven on its own wheels into the State of California for the purpose of resale, acting under the authority of Chapter 788 of the California Statutes of 1937, and have further demanded of the plaintiffs penalties of $7.50 for each car for which no permit was obtained prior to the time of the entry of said vehicle into the State of California.

XI

The Court further finds that the defendants have threatened to seize and sell all of said vehicles for which no permits have been issued in accordance with the authority vested in them by the said Chapter 788 of the California Statutes of 1937.

XII

That the operation of cars in caravans does not create an additional hazard to passing traffic or to other users of the highways; that the said caravaning of cars does not create a traffic problem necessitating special policing of said caravans; and that the said caravaning of cars does not cre-

ate undue wear or tear on the roads and highways of the [fol. 102] State of California.

XIII

That the plaintiffs herein have no plain, speedy or adequate remedy at law:

1. That the statute constitutes a burden upon interstate commerce and is not for the purpose of permissible highway regulation, but is a revenue measure only;

2. That the license fee of $7.50, designated in the Act as "compensation for the privilege of using the public highways" and the further license fee of $7.50, designated in the Act "to reimburse the State for expense incurred in administering police regulations pertaining to the operation of vehicles moved" are excessive charges and bear no relation to the added expense of the Motor Vehicle Department in the policing of the highways of the State of California;

3. That said statute is an unlawful discrimination against interstate commerce and is not based upon any reasonable basis of licensing, but is arbitrary, discriminative and unfair, and has the effect of imposing an unjustified burden upon business in interstate commerce and upon the transportation of vehicles in interstate commerce;

4. That said Act deprives these plaintiffs of their property without due process of law;

5. That said Act denies to these plaintiffs when engaged in interstate commerce in the State of California the equal protection of the law;

6. That said Act creates an unreasonable and arbitrary classification, in that it applies only to persons, firms and corporations using the highways for the transportation of motor vehicles for the purpose of sale and does not apply to other persons using said highways under comparable circumstances;

[fol. 103] 7. That the said fees charged under said Act are wholly disproportionate to other taxes, fees or licenses charged by the State of California for the registration of vehicles in said State or for vehicles using the highways in said State;

8. That the imposition of the license fees provided in said Act is exorbitant, arbitrary and unfair to such a degree that the interstate business in which the plaintiffs are engaged will suffer irreparable damage.

Conclusions of Law

That the provisions of Chapter 788 of the Statutes of 1937 of the State of California, reading as follows, to wit:

"Section 3. No person, firm or corporation, shall use any highway in this State for caravaning vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California upon application at its office in Sacramento or any of its regularly established branch offices other than stations at the State boundary line a special permit as to each vehicle so caravaned, for use of the highways of this state in caravaning such vehicles, which permit shall be displayed by posting the same upon the windshield of such vehicle or in other prominent place thereon where it may be readily legible.

Section 4. As a condition precedent to the use of the highways of this State for the purpose of caravaning and the issuance of any special permit provided for in the previous section of this act, the Motor Vehicle Department of the State of California shall charge and collect, for each vehicle for which a caravan permit may be issued whether such vehicle be operated under its own power or in tow of a motor vehicle, a fee of seven and fifty one-hundredths dollars as compensation for the privilege of using the public highways of this State and a fee of seven and fifty one-hundredths dollars to reimburse the State for expense incurred in administering police regulations pertaining to the operation of vehicles moved pursuant to such permits and to public safety upon the highways as affected by such operation.

Section 5. Permits issued pursuant to the provisions of this act shall be valid for a period of six months after date of issuance and shall be valid only in the hands of the original permittee but shall not authorize the operation of any vehicle other than that for which originally issued. Such permits shall contain such information and be in such form and shall be issued under such rules and regulations as may be prescribed by said Motor Vehicle Department.

[fol. 104] Section 6. The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this State by such vehicle during the period that such vehicle may be operated for the purpose of sale or exchange under and solely in accordance with such permit upon the public highways of this State; provided, however, that nothing in this section shall exempt the owner or operator of such vehicle from compliance, except with respect to fees or license charges, with all laws of this State now or hereafter adopted, relating to safety in the use of the public highways.

Section 7. All fees from the issuance of permits provided for under this act shall be collected by the Motor Vehicle Department. One-half of such fees shall be paid into and become a part of the motor vehicle fund in the State Treasury, and are hereby appropriated out of said fund for the support of the Department of Motor Vehicles; *provided, however, that should a motor vehicle support fund be created in the State Treasury said one-half of such fees shall be paid into and become a part of said motor vehicle support fund. The remainder of such fees* shall be paid into and become a part of the State highway fund in the State Treasury. The moneys so derived by the State are intended as compensation for the privilege of using the highways of this State and to reimburse the State Treasury for the added expense which the State may incur in the collection of such fees and in the administration and enforcement of this act and the expense of policing the highways over which such caravaning may be conducted.

* * * * * * *

Section 9. Every dealer in vehicles shall report to and list with the Motor Vehicle Department on forms to be prescribed by such department and in accordance with rules in regard thereto promulgated by such department, each vehicle received, held or offered by him for sale which has been caravaned over the public highways of this State. Such report and listing shall be made forthwith upon the receipt of such vehicle. Such report, among other things, shall show the number of the caravan permit authorizing the operation of the vehicle covered in such report. In the event no permit has been secured for such operation payment of the re-

quired fees and penalty shall be made to the department and shall accompany such report. In the event permit fees required by this act are not paid when due a penalty of fifty per cent of such fees for each such vehicle shall be assessed and collected by the department.

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Section 11. The permit fees provided for herein shall be due and payable in advance of the operation upon the public highways of any vehicle for which such permit is required and shall be a lien against the vehicle for which they are due during the time such vehicle is held for sale or offered for sale or resale.

[fols. 105-106] Section 12. The department shall collect the permit fees and enforce the liens provided for herein by seizure of the vehicle or vehicles upon which such fees are a lien from the person or persons in possession thereof, if any, and by sale of such vehicle. The seizure and sale herein authorized may be made at any time after such fees become due and shall be conducted and carried out by the department in the same manner as is provided by law for the seizure and sale of personal property by the assessor for the collection of taxes due on personal property.

Section 13. Violation of any of the provisions of this act is a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment."

are an unconstitutional exercise of legislative power and are, therefore, void, as violative of the commerce and due process and the equal protection clauses of the Constitution of the United States; that the provisions of said Act, hereinabove enumerated are also unconstitutional, in that they are in contravention of and repugnant to the Fourteenth Amendment to the Constitution of the United States of America.

Plaintiffs are therefore entitled to a permanent injunction.

Dated at Los Angeles, California, this Oct. 18, 1938.

Curtis D. Wilbur, Circuit Judge. Geo. Cosgrave, District Judge.

[File endorsement omitted.]

[fol. 107] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. Eq-1203-C

PAUL GRAY, INC., a California Corporation; AL ASHER, Hirsch Mercantile Company, a California Corporation; Melvin E. Snyder, an Individual Doing Business under the Firm Name and Style of United Auto Sales; Kelley Kar Company, a California Corporation; L. H. Thayer, National Motor Car Company, a California Corporation; Samuel A. Klein, an Individual Doing Business under the Firm Name and Style of Klein Auto Company; Bill Sanella, C. O. Mace, Ray Culvertson and Jack Parmilee, a Copartnership Doing Business under the Firm Name and Style of Culbertson & Parmilee Motor Sales; E. F. Porter, Don Cardiff and F. A. Rodgers, a Copartnership Doing Business under the Firm Name and Style of Cardiff & Rodgers; Motor Trading Company, a California Corporation, Plaintiffs,

vs.

RAY INGELS, as Director of the Department of Motor Vehicles of the State of California; Howard E. Deems, as Registrar of the Department of Motor Vehicles of the State of California, and Lon W. Butler, as Manager of the Los Angeles Office of the Department of Motor Vehicles of the State of California, Defendants

DECREE FOR PERMANENT INJUNCTION—Filed October 19, 1938

This cause came on to be heard on the 4th day of May, 1938, and was argued by counsel, and thereafter submitted; and upon consideration thereof,

Now, Therefore, it is Ordered, Adjudged and Decreed:

1. That the defendants, Ray Ingels, as Director of the Department of Motor Vehicles of the State of California, Howard E. Deems, as Registrar of the Department of Motor Vehicles of the State of California, and Lon W. Butler, as Manager of the Los Angeles Office of the Department of Motor Vehicles of the State of California, and each of them, and their agents, servants and employees and all [fols. 108-109] other persons acting under, through or by

the authority of them or either of them, or by virtue of their said office, be and they are hereby jointly and severally enjoined and restrained, specifically and absolutely, from enforcing against the plaintiffs herein, or any of them, the provisions of Sections 3, 4, 5, 6, 7, 9, 11, 12 and 13 of Chapter 788 of the Statutes of 1937 of the State of California;

2. That the bonds heretofore given by plaintiffs herein under the temporary restraining order be, and the same are hereby exonerated;

3. That in the event an appeal is not perfected within the statutory time therefor, then upon the expiration of the time for such appeal, that the defendant, Ray Ingels, return and repay to the plaintiffs herein all sums collected and held by him under and pursuant to the Order of this Court dated the 20th day of November, 1937.

Dated Oct. 18, 1938.
Curtis D. Wilbur, Circuit Judge. Geo. Cosgrave, District Judge.

Approved as to form by Attorney for Defendants: By Frank Richards.

Judgment entered Oct. 19, 1938.
Docketed Oct. 19, 1938.
Book C. O. 1, Page 103.
R. S. Zimmerman, Clerk, by R. B. Clifton, Deputy.

[File endorsement omitted.]

[fol. 110] In United States District Court

[Title omitted]

Statement of Evidence—Filed December 12, 1938

For the purpose of completing the record in the above entitled cause respecting the proceedings had therein, and to enable the parties to have said proceedings and the decree entered therein reviewed on appeal, the court does certify that the following proceedings were had in said cause:

The above entitled cause came on regularly on the 8th day of October, 1937, at the hour of 10 o'clock A. M., before the Hon. Curtis D. Wilbur, Circuit Judge, and the Hon. George Cosgrave and Leon R. Yankwich, District Judges, sitting as a statutory three-judge court, pursuant to Section [fol. 111] 266 of the Judicial Code, as amended (28 U. S. C., Sec. 380), for hearing upon the application of the above named plaintiffs for an interlocutory injunction, Tripp, Penney & Callaway, by George Penney, Esq., appearing as attorneys for plaintiffs, and U. S. Webb, Attorney General of the State of California, by John O. Palstine, Deputy Attorney General, appearing as attorneys for defendants.

Certain oral testimony was received on behalf of plaintiffs and defendants. The affidavits of the following named witnesses were offered and received in evidence on behalf of defendants and filed with the clerk of the court upon order of the court:

Ray Ingels, E. E. Edenholm, M. F. Shaw, Roy S. Busby, W. J. Holm, George D. Cron, Van Peabody, Roy B. Alexander, Glen C. Stater, Fred Ehlers, Glenn S. Roberts, Lee S. Scott.

STIPULATIONS AS TO CERTAIN EVIDENCE

It was stipulated and agreed, with the approval of the court, that the affidavits of the following named witnesses could be filed and received in evidence subsequent to the hearing with the same effect as if filed and received in evidence at the time of the hearing, and such affidavits were filed on the dates shown:

R. W. Adams on October 11, 1937.
J. M. Hunt on November 3, 1937.
Tod Bates on February 15, 1938.

The hearing on plaintiffs' application for interlocutory injunction was completed on October 8, 1937, and on November 20, 1937, the court ordered that interlocutory injunction issue as prayed.

It was thereafter stipulated between the plaintiffs and the defendants by written stipulation dated April 22, 1938, and filed with the approval of the court on May 4, 1938, that the oral testimony received on October 8, 1937, and the affi-

davits theretofore filed, should be received as evidence upon the final hearing of the cause upon plaintiffs' application for permanent injunction, and that the defendants may [fol. 112] offer the affidavit of E. Raymond Cato as evidence at said final hearing subject to the objections of the plaintiffs to the same or any portions thereof.

The cause came before the court for final hearing on the 4th day of May, 1938. The affidavit of E. Raymond Cato was received in evidence on behalf of the defendants and was filed with the clerk upon order of the court, and the motion of the plaintiffs to strike certain parts of said affidavit was overruled. The cause was submitted.

For the purpose of complying with Rule 8 of the Rules of the Supreme Court of the United States, the following is a statement of the oral testimony received on October 8, 1937, in condensed and narrative form, save as a proper understanding of the questions presented has required that certain parts of it be set forth otherwise.

Plaintiffs' Evidence

Mr. Penney: Your Honor, we are prepared to stipulate at this time that the witnesses for the complainants in this case, if called, would testify, in substance, that 80 per cent of the cars which come into the state for the purpose of sale and resale from outside of California come in convoys of two or more cars; 20 per cent come in as single unit cars: That of the cars that come into this state in convoys 50 per cent of the cars are in units of two, the front car towing the rear car by means of a tow-bar, and 50 per cent of all cars come in as units of one in convoy, but each car in charge of a separate driver.

Mr. Palstine: We will stipulate that the witnesses for the plaintiffs, if called, would so testify.

Judge Cosgrave: There is a question that I am not entirely clear upon. 50 per cent of the cars come in in units of two?

Mr. Penney: That is right.

Judge Cosgrave: And 50 per cent of the cars come in singly?

Judge Yankwich: Now as to the last part of the stipulation about each car in charge of a driver, you mean it [fol. 113] applies to the two units too?

Mr. Penney: Let me explain. We have two situations that we are trying to stipulate to. One stipulation is as to cars that come in caravans or convoys. It has nothing to do with cars coming together. We will stipulate that 80 per cent of the cars come in convoys of two or more.

Mr. Palstine: May we qualify that stipulation as to the figure "two"? I believe it should not be limited to the figure "two". 80 per cent come in groups of two or more to constitute a convoy and certainly at least three or perhaps four, and I am sure that is the way the facts are—that at least 80 per cent come in groups or three or more; 80 per cent of the cars brought in for sale.

Mr. Penney: I think that is correct. That was the intention of the stipulation. 20 per cent of the cars come in single unit cars crossing the border one at a time. Now the situation as to whether the cars are coupled together, we will stipulate, for the purpose of the record that 50 per cent come into the state are coupled together in units of two, the front car pulling the rear car by the use of a tow-bar and the other 50 per cent are single unit cars in charge of a separate driver.

Mr. Palstine: We will stipulate that the witnesses for the plaintiffs, if called, would so testify.

Judge Cosgrave: You will have to clear me up on that stipulation.

Mr. Palstine: We will stipulate that the witnesses for the plaintiffs, if called, would so testify with regard to the percentage of cars brought in as units of two coupled together with a tow-bar.

Justice Wilbur: Is it your purpose that you offer any evidence to contradict it?

Mr. Palstine: With regard to the 80 per cent, we do have one affidavit that shows or indicates that the percentage should be at least 90. With regard to the percentage that are single cars not driven in convoys, so far as I am aware, [fol. 114] I do not have at this time any evidence to dispute that.

Justice Wilbur: Then the only difference between you is whether it is 80 or 90 per cent?

Mr. Palstine: Yes, but I think, for the purpose of the record, that we can stipulate that one witness would testify 90 per cent, and other witnesses would testify 80 per cent, which I do not believe would make any material conflict. That is the only difference between us.

Justice Wilbur: What I had in mind is that if you have a conflict, the weight of the evidence is controlling, and the fact that you stipulate a number of witnesses would testify to something would not indicate the weight to be given that testimony, and it would leave the matter somewhat in the air. If you can agree on the facts, the necessity for testimony disappears.

Mr. Palstine: We feel we are avoiding the necessity for the actual calling of the witnesses, and the weight of their testimony is then still left to the court.

Judge Yankwich: The court not having heard the witnesses, we are confronted with the stipulation.

Mr. Penney: For the information of the court, there is a gentleman here from Yermo who can give us the information directly.

Justice Wilbur: Is he a state employee?

Mr. Penney: Yes.

Justice Wilbur: Do you want to put him on the stand?

Judge Cosgrave: I want to ask a question before you produce this witness. Let me understand what you are stipulating to. Is it that 80 per cent of the cars brought in for the purpose of resale come in convoys of three or more?

Mr. Penney: There seems to be a question on the stipulation. I am willing to withdraw it, and put the gentleman from the station of Yermo on the stand, and let him state the number or percentage, and then possibly we can stipu-
[fol. 115] late that it is the ratio in which the cars come into the state. That would settle that.

Judge Cosgrave: Now, in the first place, you stipulate that 80 per cent of the cars come in were in convoys of two or more. That was the first or the start of the stipulation. And now, as I understand, you are changing that to three or more?

Mr. Palstine: That is correct.

Judge Cosgrave: 20 per cent comes in singly, and each car in charge of an individual driver, is that right?

Mr. Palstine: Yes.

Judge Cosgrave: Now you make some division of this 80 per cent that I am not entirely clear upon.

Justice Wilbur: 50 per cent in numbers, and 50 per cent singly.

Judge Cosgrave: 50 per cent of the 80 per cent. I don't understand. The whole 80 per cent were in convoys of three or more.

Justice Wilbur: They were not fastened together.

Judge Cosgrave: That is the classification. 50 per cent of the 80 are what?

Mr. Penney: Coupled together with tow-bar.

Judge Cosgrave: Two together.

Mr. Palstine: Yes.

Judge Cosgrave: What about the 50 per cent of the 80 remaining?

Mr. Penney: Single unit cars.

Judge Cosgrave: Single unit,—a car driven by itself?

Mr. Penney: Yes; even though there are three cars, each car will have a separate driver.

Judge Cosgrave: All right.

Mr. Penney: I am perfectly willing to put the gentleman on the stand, and we will call Mr. William B. Manford.

William B. Manford, called as a witness on behalf of [fol. 116] plaintiffs, being first duly sworn, testified as follows:

Direct examination:

I am senior clerk-in charge of the Yermo Station No. 8 at Yermo. I have knowledge of the cars which come into California through that station in caravans for the purpose of sale and resale. I have been at that station 16 or 17 months.

Q. Can you give the court at this time the average number of cars which come in on their own power, or in tow of another, whether they come in units of two or more—can you give us that proportion?

Judge Wilbur: For sale, you mean?

Mr. Penney: Yes.

A. Now you want during the time that the caravan act——

Q. During the last 16 months.

A. It would be pretty hard for me to say. It would be an approximate estimate of the cars.

Q. Give us the approximate estimate.

A. Single caravan cars, coming singly and driven into the state and not in caravan or convoy?

Q. That is right.

A. I would say 20 or 25 per cent of the cars.

Q. Those come in single car units, in charge of a single driver?

A. Yes, sir.

Q. And not in convoy with other cars?

A. That is right.

Q. Can you give the approximate estimate,—your approximate estimate of the numbers which come in tow of another car?

A. That would answer itself. It would be 75 or 80 per cent of the cars that would come through or reach my station,—that station,—in the last 16 months. Might not run that high. We keep no record or figures, and it would only be from my personal observation of looking out and seeing [fol. 117] the cars coming in. We have had in the last few days several hundred cars,—that is, not several hundred cars, but approximately 100 to 150 caravan cars driven singly. I would say that they would come into the office and then they would bunch up outside, and while the cars might be grouped, or a bunch of cars and scattered out, and at the station they would look like a group, but whether they were together I would not know, but I know that there are a lot of caravan cars coming in singly. I would say 25 per cent come in single cars, or single units.

Q. And not in convoy with other cars?

A. That is right. That is, at that station, and that is the only one that I can testify about.

Judge Yankwich: Did you have any experience in any other station?

A. I have been in the department ten years. I have been in the stations since 1928.

Judge Yankwich: How does the per cent at Yermo Station compare with your experience in other stations?

A. My station has more of the single unit driven cars.

Judge Yankwich: So that the per cent would not be so great at other stations?

A. That is right. From my personal experience.

Cross-examination:

I do not know that the cars I observed at the station as single are operated upon the highways as single or in con-

voy. I take it for granted that cars are single when there are several hours of time in between the arrival of the cars.

FRANK B. MURCHISON, called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

[fol. 118] Direct examination:

I am the auditor for the Robertson's Drive and Truck-away. It delivers the output of the Chrysler factory of Maywood, California. As auditor of the Company I have access to the records showing the number of cars transported by the Company in Zone 1, that zone lying south and including San Luis Obispo, Kern and Inyo counties. The automobiles which my Company transport in Zone 1 are being transported for the purpose of sale or offering same for sale. They are new cars.

Q. Do those cars move in units of one or more?

A. Units of one or more, and single drivers, in other words.

Q. What I am trying to find out is whether they move in groups of two or more.

A. Two or three or four, but all separate drivers.

Q. Can you average the number of cars per month driven over the highways of the State of California in Zone No. 1 for the purpose of sale or resale by your organization on their own wheels?

A. Approximately 1500 to 1700 per month.

Q. Now, do you truck automobiles?

A. Yes.

Q. Will you describe the manner in which you truck automobiles?

A. They are trucked on our units of a truck and a trailer. We have 24 which carries four cars each, and then the balance all carry six.

Q. Will you describe the trucks which you use in the hauling of automobiles?

A. Our unit of four, carries two on the car, and two on the trailer.

Q. How long is it?

A. 60 feet. Just under 60 feet. 59 feet and a half, and we have four units which carry six cars, three on the first, what-

ever you call that, two on the trailer, and one on the truck [fol. 119] over the cab, which makes six in all.

Q. Do you know how many cars that you truck on an average per month over the highways in this state?

A. A little less than we drive. Possibly 1500 or 1600. Very close to 50 per cent trucked.

Cross-examination:

Of the 1700 cars which we drive away I could not say exactly what percentage of them goes to the Los Angeles Metropolitan area. It is the policy of my Company to drive away cars within a short distance than we truck away cars.

Justice Wilbur: The use of the trucks is where the distance is greater, isn't that true?

A. Not at all times. On the heavier trucks you cannot load them on trucks and we always have to drive those.

By Mr. Palstine:

Q. You only drive away deliveries outside of the metropolitan area when they are trucks or other vehicles that you cannot load on the trucks—away equipment?

A. We have the right to drive them up to a certain distance.

Q. Do you know what that distance is?

A. What do you mean by the metropolitan area?

Q. Well, we would get your statement first on the proposition: You state that you are permitted to drive up to a certain distance. What is that distance?

A. 300 miles.

Q. And do you drive quite a few vehicles other than trucks as far as 300 miles?

A. At times we do.

Q. What would you say constituted the entire operation of the drive-away deliveries that you make?

A. I could not say what percentage.

[fol. 120] Would it be 5 per cent?

A. Yes.

Q. Would it be 50 per cent?

A. No.

The Traffic Manager for the Chrysler Motors in Los Angeles is Mr. Hunt. We have truck drivers and what you call single driver. They are all residents of Los Angeles

county, permanently and regularly employed by us. They have been steadily engaged in this business for some time. We hire experienced drivers who are licensed chauffeurs in California. They are not under bond. We furnish them with return transportation to Los Angeles from destination.

CHARLES E. MISKE, called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

Direct examination:

I am manager of the Insured Drive-Away, Southern Branch. We have branches in Los Angeles and San Francisco. Our business is transporting new trucks and mostly new cars. We transport White, Reo, Mack and International Trucks.

Q. Do you transport within Zone No. 1?

A. Yes, sir.

Q. Do you transport any of those trucks on the public highways which trucks are for sale or resale in Zone No. 1?

A. Yes, sir; some.

Q. What would be the average per month in Zone No. 1?

A. It is hard to say. I imagine 25 or so.

Q. Do you transport trucks in Zone No. 2, using the public highways, which trucks are for sale or offered for sale?

A. Yes. We transport out of here.

Q. I am speaking of the northern branch.

[fol. 121] A. Yes, sir; from San Francisco.

Q. How many do you transport per month?

A. Well, trucks, I would say 250 or 300 per month, trucks and cars—a few cars.

Those are new trucks. The drivers are licensed drivers and regularly employed.

Cross-examination:

Q. I do not understand the number of trucks each month that you drive from each of the places.

A. Between two and three hundred from San Francisco,—that is not all trucks.

Q. How many from Los Angeles?

A. Our production is not great here, 25 or so.

Q. Now, you are familiar with the towns right around the City of Los Angeles?

A. Yes.

Q. Take the portion of Los Angeles which is bounded on the west by Santa Monica; on the east by El Monte; on the north by San Fernando; on the south by Long Beach, that would be generally known as the metropolitan area of Los Angeles, wouldn't it?

A. It would.

Q. Within that area what percentage of your 25 trucks per month that you drive away do you deliver?

A. It would be very small from the fact that we work on longer trips.

Q. Mostly would go outside of that area?

A. Yes, sir.

Q. Are you familiar with the political subdivisions around San Francisco Bay?

A. I am.

[fol. 122] Q. You know of the City of Oakland and Alameda?

A. Yes.

Q. And the towns of Albany, Berkeley and the populated area on each side of the Bay which is contiguous to the city?

A. Yes, sir; I do.

Q. Do you know what percentage of the cars driven away from the San Francisco branch go to the metropolitan area of San Francisco?

A. I would not know exactly and would simply have to guess. My estimate would be about 25 per cent.

Most of them are delivered to dealers. Dealers do not sell as many trucks as they do cars. We have shipments of three or four trucks to one dealer at times. More often the trucks are delivered singly than three or four at a time.

STIPULATION IN REGARD TO THE TRANSPORTATION OF STUDEBAKER AUTOMOBILES IN ZONE 1

That there are approximately 250 cars per month that use the highways in Zone 1 for the purpose of transportation of new automobiles for the purpose of sale; that those cars move in units of one in charge of a single driver; that they are in charge of a registered, licensed driver in California and that they travel within a radius of thirty miles to their plant which is close to Maywood, California. Maywood is contiguous to Los Angeles.

STIPULATION AS TO NEW INTERNATIONAL TRUCKS IN ZONE 1

That on an average 100 trucks per month are transported over the highways in Zone 1 on their own power; that 30% of those trucks move in units of two, the front truck towing the rear truck by the use of a tow-bar; that in addition to the movement of those trucks in Zone 1, that they move approximately 50 trucks per month from their San Pedro branch, from the docks at San Pedro, to the place of business in Los Angeles, a distance of approximately 20 miles, in units of two, each forward truck pulling the rear truck [fol. 123] by use of the tow-bar. By that is meant there are 150 trucks in all. Of the first 100 mentioned about 70% of those go to the metropolitan area of Los Angeles.

STIPULATION AS TO CARS CARAVANED TO CALIFORNIA

From January 1, 1934, to the 1st of January, 1935, there were caravaned into California 9,663 automobiles for the purpose of sale or offering same for sale; that from January 1, 1935, to November 29, 1935, there were 14,000 automobiles caravaned into California for the purpose of sale or offering the same for sale. These were new and used automobiles, passenger cars. The number of cars caravaned into California since that time per year is approximately in the same proportion.

Defendants' Evidence

EARL W. PERSONIUS, called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct examination:

I am Captain of the California Highway Patrol. I am stationed at Sacramento. I supervise the enforcement of the caravan law in Zone 2, the northern zone—that includes the forty-seven northern counties of the state. I am familiar with what additional costs have been imposed upon the State of California Highway Patrol in border stations in the area that I have in my charge. There has been prepared by the accounting department of the Department of Motor Vehicles a statement of the expenses—statement of the income and

expenditures of the enforcement of the Caravan Act of 1937. In that statement there is included a statement of the cost in connection with the California Highway Patrol in border stations. I am familiar with the correctness of the costs in so far as they relate to the California Highway Patrol and the border stations under my supervision. The figures in that statement in so far as they relate to those expenditures with which I am familiar correctly state the additional expenditures imposed by the 1937 caravan statute and actually incurred in the enforcement of the caravan [fol. 124] statute.

(Statement, Defendant's "Exhibit A", offered for identification.)

This statement was not made under my direction. It was taken from the accounting department of the Department of Motor Vehicles. I do not have charge of that Department. I have nothing to do with the keeping of the books in the accounting department. I do not know whether those accounts are correctly kept or not. I was an inspector in the Highway Patrol in 1934, 1935 and 1936 which is of equal rank with Captain. I recall the enactment of the caravan law of 1935. I do not know how many additional officers were put on the Highway Patrol in 1935 for the enforcement of that Act. I cannot say that there were no additional officers put on the Patrol for the enforcement of the 1935 Caravan Act, but I know that other officers were called in to aid in the caravan enforcement. When I say enforcement of the Caravan Act, I mean the general enforcement and regulation of traffic. I draw a distinction between intra-zone traffic and interstate traffic in so far as caravans are concerned because of the fleet movement of cars coming from without the state. My officers would not necessarily ride with the fleet movements coming from without the state to the points of destination. The main route that I am familiar with is U. S. 40 coming through Truckee and there is a large amount of fleet movement over that highway. The fleet movements were entirely interstate. As to the number of officers I have on the highway, that is kind of difficult to say. We have one stationed at Truckee throughout the year and then extra two men in the summer months. We have three men between Summit and Auburn, of Placer County, which leads into Sacramento, the regular officers assigned to patrol duty in those counties.

By Mr. Penney:

Q. How long has the Highway Patrol kept men at Truckee?

A. They have had a man at Truckee for years,—one man.

Q. You still have one man at this time?

A. No; we have two men now, and two men added on the [fol. 125] west slope of the mountains coming from the Summit to Sacramento.

Q. Give me the total number of officers on the highway?

A. It depends on the length of the highway that you are speaking about. If you are talking about the mountains or do you mean continuously through the valley?

Q. I am speaking from the point of entry on the particular highway, how many officers are under your supervision?

A. I know about the checking station which is directly under by supervision, but the rest of the officers are under the supervision of the respective captains of the counties.

By Mr. Palstine:

Q. Mr. Personius, in this statement I see under CHP on Exhibit A: "Super. Insp. Bly. No. Dist.,—1—50 per cent—$150.00 salary." Can you explain what it is?

A. That is Inspector Bly and his duties were divided at the time that Chief Cato came in and decided that one-half of his salary should be apportioned to the enforcement of the Caravan Act. They divided Inspector Bly's salary 50 per cent of the time to the administration of the Caravan enforcement.

Q. He is engaged in the administration of the Caravan Act in the State of California?

A. He is.

Judge Wilbur: The proportion of 50 per cent is on the theory that the officer so named has spent 50 per cent of his time in the enforcement of the Act?

A. Yes. The Caravan enforcement and the operation of caravans.

Judge Wilbur: Isn't it a fact that you have taken the expense and said 50 per cent is due to that item?

Mr. Palstine: We can only do it by taking one at a time, sometimes it is an estimate of 50 per cent, and sometimes they in fact devote the entire time, and we will show that by this and other witnesses.

[fol. 126] Judge Wilbur: I know nothing about it whatever except what I see by your report. You have taken 50 per cent, I suppose, and estimated that 50 per cent of the time of the individual concerned is devoted to the caravan operation.

By Mr. Palstine:

Q. Mr. Personius, there is under the division "CHP" on Exhibit A, "Capt. Personius, 1, Salary $240.00." Do you devote your entire time to the enforcement of the caravan statute?

A. I do.

Q. There is under that head "one district officer—$215.00, and three district officers at $200.00." Do you know what the duties of those officers are?

A. I do. I know the duties of both of them, or, rather, all of them. Two of them worked under Inspector Greer in Los Angeles, and the other two reported to me and worked under me in Sacramento.

Q. Do you know that those two district officers under your supervision devoted their time to the enforcement of the caravan statute?

A. They do.

Q. There is shown 30 patrolmen at $170.00: Do you know whether there were additional patrolmen added for the purpose of the enforcement of the caravan statute in 1937?

A. There was.

I am familiar with the roads in the district under my supervision in so far as caravaning thereon is concerned. Of these officers, seven were assigned in northern California for the purpose of the enforcement of the caravan statute.

From these 30 officers, an additional man was assigned in Modoc County, the north east corner of the state, for the purpose of the enforcement of the 1937 statute. The highways there are the Yellowstone Cut-off from Oregon and state highway route No. 16. Lassen County received two of these men for the purpose of the enforcement of the [fol. 127] caravan statute. Highways Nos. 395 and 20 run through there. That also covers the Feather River route. This entrance out of Nevada, the Feather River route through Susanville Road and they all unite at this point. Caravans coming from the easterly portion of the United States through Nevada for California as their destination,

pass over this highway. Other officers of these 30 were added in Placer County and El Dorado County. United States Highways Nos. 40 and 50 go through those counties. Two additional officers were added in El Dorado county and two in Placer county. Other additional officers from these 30 for enforcement of the caravan statute were two officers working inter-mountain from Sacramento into Modoc and covered No. 395 as it entered Nevada for California and into Los Angeles. These officers were assigned to counties for the purpose of enforcing the law. They worked with the traffic, the additional traffic, and collected what fees they are able to apprehend from those that come in without registering at the border, without first obtaining permits—what we call sneakers.

The highways entering the state of California in the area under my supervision are all two-lane highways.

Q. Will you relate to the court what hazard there might be in connection with the use of the highway by driving of fleets of automobiles?

A. Particularly United States No. 40, which enters at Truckee, and a large number of fleets of caravans move there, the caravans are checked in at the border stations, obtain permits, or if under the new law they have permits, the officer checks each individual automobile against the permit, which has been previously obtained on the car, and the traffic officer there invariably collects all of the drivers together and determines whether or not the operators are licensed chauffeurs in the State of California or any other state. They are warned and told how to proceed over the mountains, which is the first seven miles, and amounts to a rise of 1700 feet to the top of the summit, and invariably the officer will take the caravan over the hill, until he meets the officer. He rides to the end of his beat, and there the other [fol. 128] officer takes them in charge, and takes them down the mountains, and keeps them properly separated, so that they will drive properly, and on their own side of the road as much as possible.

Q. Have you had any experience in regard to the movement of fleets of cars over the highways when there was not an officer accompanying them?

A. Yes. A year ago last winter. We had a fleet of some 60 automobiles which were snowed in on the road, because the tow car could not pull the other car and they started out

from Truckee without chains, and then when the first car could not pull the other one they would go no farther and if they had been single cars they would have gone along all right.

Mr. Penney: That is from our own knowledge?

A. Yes. I went up personally when I got the word. I drove to Truckee, and they had the highway blocked, and the Highway Commission was pulling them out and trying to get the snow plowed out and the highway cleared and when we got up to this fleet of cars they were not able to move, and some of them were practically covered.

Judge Wilbur: What date was that?

A. I cannot recall. It was under the old caravan law. I think it was in January, 1936.

Q. Now, have you had occasion to observe the general manner in which these fleets are driven over these highways that you referred to?

A. I have.

Q. What have you observed?

A. On numerous occasions when these fleet caravans are coming, I instruct the man at Truckee to call me in Sacramento, and I leave Sacramento all hours of the night and day and have gone to Truckee and come from Truckee to Sacramento, a distance of 106 miles, with the caravan myself, in fleets. Now, engaged in the operation of these cars and on several occasions I have noticed the operations over the mountains, and there are a lot of boys, or young boys, [fol. 129] not familiar with mountain roads, and are afraid to get over on the rim and stay on their own side of the highway. I have cautioned them and brought the fleet into Sacramento on several occasions.

Q. Are all of the highways entering the portion of California under which your supervision requires them to pass within a mountain area?

A. Yes, sir. Everyone of them.

Q. Is the hazard from driving over such area increased by reason of the movement of cars in fleets?

A. Yes.

Q. Can you relate to the court what you mean in that regard?

A. In addition to that is the normal flow of traffic which will congest in mountain roads, more or less, but where you have the hook-ups in fleets, I have known the congestion in

traffic to be for a half or three-quarters of a mile, and where it would be impossible to get by the fleet in hook-ups.

Q. Now, when it comes to the cars transported for the purpose of sale, do those cars attempt to pass another car?

A. Numerous times. I have seen them pass on actually blind curves where I would not take a chance to pass with a single automobile.

Q. Is it customary practice in fleet movements for them to maintain their fleet as a unit on the highways?

A. Yes, sir.

Q. You have observed them operating that way?

A. Yes, sir.

Q. Can you compare that for the court, with the manner in which single cars operate in the event that they have occasion to pile up, as you say, on the mountain roads?

A. Single cars pile up in normal traffic, but as soon as there is a space, one will go by and pass another, and in a very little ways you will have a clear distance and the congestion is over, whereas with caravans they are all held [fol. 130] together and continue with the congestion and there is that hazard throughout the mountain highway, or until you come to a highway and have more open highways.

Q. Now, in regard to the border stations there listed on Exhibit A,—the border stations at Daggett, Yermo, Dunsmuir, Clam Beach, Fort Yuma, Blythe and Truckee,—which are under your jurisdiction?

A. I have Truckee, Dunsmuir and Clam Beach.

Q. Let's take the station of Dunsmuir, as shown on this exhibit, four employees, and there is a statement, and figures arrived at of $297.50. Will you explain what it means and how the figure was arrived at?

A. It was figured out by the time that the men devote to the enforcement and collection of the caravan fees.

Q. A similar statement is made in regard to Clam Beach, except the number is 3 and the total is $234.50, and in Truckee the number is 5 and the salary is $377.50. In this statement it is estimated as being the cost of the enforcement of the Caravan Act of 1937, $377.50. Can you state of your own knowledge whether or not the men who are stationed at these border stations do devote 50 per cent of their time to the enforcement of the Caravan Act?

A. They do.

Q. You say they do?

A. Yes, sir.

Q. You know that of your own knowledge?
A. Yes, sir.

Judge Wilbur: In the collection of fees?
The Witness: In the collection of fees and investigation. There are so many subterfuges used and they do not readily pay the fees; they usually try to evade the fee.
Judge Yankwich: Talk you out of it?
The Witness: Contend that the automobile is not for sale, [fol. 131] and is a personal car, et cetera, which after questioning it develops that it is not and very seldom the boys are mistaken on that.

By Mr. Palstine:

Q. You have those men that you have referred to under your supervision?
A. Yes, sir.
Q. And now the supplies and stationery. Here is shown printing $150.00, and supplies and stationery $450.00. Do you know whether those supplies were sent to the border stations under your control?
A. They were.
Q. And the supplies referred to relate only to the Caravan Act?
A. Yes.
Q. Can you state generally what the supplies are?
A. Caravan permits made in quadruplicate; caravan reports, books made up; affidavit form and caravan report forms. Those are the four major reports.
Q. Now take Exhibit B shown as maintenance of automotive equipment. Automobile (Personius) average 1600 miles at 3 cents, $48.00. Do you know what it covers?
A. It is my automobile; my own automobile; depreciation.
Q. Do you make a monthly estimate of the cost of the maintenance of your automobile?
A. Yes, sir, and accepted by the Department.

Judge Yankwich: The Department allows it as maintenance on the car?
A. It is a state automobile,—that is depreciation on the state equipment.

By Mr. Palstine:

Q. That is the cost attributable to your operation of the state car assigned to you?

A. Yes, sir.

Q. Then there are shown for automobiles 7,320 miles, at [fol. 132] 3 cents, $219.60. What are those expenses for?

A. For cars to be used for caravan enforcement.

Q. Who uses those?

A. District officers.

Q. Do you know in regard to the use of those cars, whether that is an approximately correct charge for the use of those cars in the enforcement of this Act?

A. I would not; no, about the exact cost. It was done by the Bureau of Equipment. I assume that is the amount.

Q. There is a charge of 3 cents per mile?

A. Yes.

Mr. Palstine: I assume that it would be stipulated that 3 cents per mile is not excessive.

Mr. Penny: No. I would stipulate it is very reasonable.

By Mr. Palstine:

Q. Then there are 30 motorcycles, 63,000 miles at .012, a total of $756.00, charged to the enforcement of the Caravan Act. Will you state what it represents?

A. 30 motorcycles for the 30 additional men employed.

Q. Some of the men that you have referred to in so far as being under your jurisdiction?

A. Yes, sir.

Q. Do you know whether that is a reasonable estimate of the distance that they drive and the cost of their driving in the enforcement of the 1937 Caravan statute?

A. I would say it is a very reasonable estimate.

From my observation of the fleet movements of cars over the highways under my supervision, and from my observation of those highways, those highways as at present constructed are not adequate to safely accommodate the caravan-type of traffic. I apply that to the border mountain counties more than the others on account of winding hazards.

[fol. 133] Judge Wilbur: The mountain roads will have to be widened and straightened before they will be safe for this type of traffic?

The Witness: Yes, sir; allowing a normal flow of traffic to pass.

Judge Yankwich: Speaking of the Truckee road there is a new outlet which has been constructed?

The Witness: It is the Feather River route.

Judge Yankwich: Yes.

The Witness: It might supply some traffic. I understand that there is some caravaning over that route this winter.

The tenth Biennial report of the Division of Highways of the Department of Public Works of the State of California dated November 1, 1936, was offered in evidence and was received by the Court as an aid to the Court in determining the facts of which it takes judicial notice. This report shows on page 219 a statement of income and expenditure since the inspection of the California Highway Commission with the bond issue of 1909 to June 30, 1936. The total income from bonds, from vehicle licenses, from apportionment of gasoline tax, apportionment of license tax, transportation license tax, franchise tax on stage lines, legislative appropriations, Federal Aid Deposits and then deposits in various miscellaneous funds shows a total of $447,547,329,83 has been received for highway use by the state for state highways. Page 220 shows expenditures for the same period for the First State Highway Fund, Second State Highway Fund, Third State Highway Fund, State Highway Construction Fund, State Highway Maintenance Fund, Highway General Fund and State Highway Fund, the total expenditure being $433,845,826.63. This report was received as Exhibit B.

Cross-examination:

In 1936 I was stationed in Sacramento. My duties at that time were practically the same as now. I had the Northern California territory and in charge of the enforcement of the old caravan law, the same as I have for the 1937 caravan law. I started in or began with the first caravan [fol. 134] law in September or October, 1935, I believe. In 1936 Inspector Bly was supervisory inspector of the Bureau. He has not come on since the inception of this Caravan Act. Inspector Greer was a District Inspector in 1935-1936 in the Department. In 1936 I had no district officers under my direct supervision. The district officers, as they are spoken of, refer to men at present working on the caravan enforce-

ment, working directly under me, and not assigned to me in any particular county in which to work. There were 4 district officers in 1937 in the employ of my department. These same men were in the employ of the Motor Vehicle Department in 1935, after the 1935 caravan law was declared unconstitutional and they continued on regularly in the employment of the Department. They have been employed for years. I do not know how many men I had in Inyo County in 1936, or how many men I had at Dunsmuir in 1936. In 1936 I had three men at Clam Beach and five men in Yermo. Since the enactment of the last Caravan Act, I have put on one additional man at Dunsmuir. In 1937 the registration of vehicles from outside the State of California increased by 15 or 20 per cent. The 20 per cent might include 35,000 or 40,000 additional pleasure cars over 1936, that would be the approximate number. I understand the registration of vehicles in California, as to residents, has increased in 1937 over 1936. I do not know how much.

In fleets of cars of this kind the distance between the cars will vary from 3 feet to 200 feet. The law provides that cars shall be kept a reasonable and safe distance apart.

The officers that I have under my supervision do not devote all of their time to the assistance of caravan transportation through that particular district. They have general traffic duties to perform, regulation of general traffic. I do not know how many caravans that have come through my district in the last twelve months have been assisted by any one of my officers in arriving at their places of destination, but the instructions are that they be called and be equal to the amount. I would say the average period of time that [fol. 135] it takes a caravan of automobiles after they reach the State border to reach San Francisco from Truckee on the highway is about 24 hours. In many instances when there are caravans on the road, my patrolmen are on duty 24 hours. One man would relieve the other man and bring the caravan from the point of entry to the point of destination of that caravan, assuming it to be San Francisco, in 24 hours. There are trucks on the highways. I have noticed none of those trucks towing other trucks. There are trucks towing trailers on the highway. With respect to those trucks and a pleasure vehicle, the pleasure vehicle is not a greater hazard than a truck towing a trailer on the same highway, no; not in the particular units, singly, no. The

mere fact that the pleasure vehicle may be for sale does not increase the hazard to the highway. If the caravans arrive, the traffic officer assists the border stations in checking the caravans and their equipment, tow-bars, licenses, etc. That is not done with every car; every car is not examined for safety of travel over the mountains, but the hook-ups are. The officers that I have listed in the three stations, besides assisting in checking of caravans of automobiles write non-residents permits and assist in registration.

We do not have seasonal employees under my supervision in the Department. We do not have seasonal employees who assist in certain seasons in patroling the highways. We have some highway patrolmen who are assigned to the mountain areas when the traffic picks up in the summertime. The number in my district varies from year to year.

Q. Well, we will say in 1936, how many did you have?

A. I didn't have any under my supervision. Those are assigned to the district inspectors of the district. I only have my observation for that, and I know that additional men were employed other than on the main routes.

Q. Do you have any knowledge of how many were employed in 1936 whether under your jurisdiction or not?

A. I think they sent three additional men to the Truckee area and the Lake Tahoe——

[fol. 136] Q. Well, the 30 patrolmen on this paper that I have before me, where were those employed?

A. The 30 patrolmen were employed for the purpose of enforcing the Caravan Act, and directing traffic on the highways.

Justice Wilber: Where were they employed?

A. They were employed and assigned to the counties through which the caravans run, or the caravaning is most exclusively done.

Q. Any particular place at the border stations?

A. No.

Q. Not in assisting the caravan fleets in going to their places of destination, were they?

A. No, just traffic duty from those movements.

Q. Just the general traffic duty?

A. Yes, sir.

Q. The assisting in the caravaning was merely incidental to the general duty?

A. It increased the hazard because by caravaning it was necessary to put on 30 men on the highways.

Q. You do not know what highways they were on?

A. Yes. We know the counties through which the routes run.

Q. You name the routes from which they were—will you please name the routes over which they were assigned and necessitating their employment.

I have a list of the assignments of the thirty officers, assisted by Chief Cato, of the assignment. This list is prepared by the Chief of the highway patrol. Those are the men that were assigned from the school. The chief and his assistant assign the men. I had charge of that district in Northern California over which the caravan fleet operates but I didn't have charge of the patrolmen.

Q. Had you made request for these patrolmen for these [fol. 137] particular routes to assist in the policing of the highways because of the caravaning?

A. This came about by reason of a conference between the director, the chief, and myself, and I believe one other party, and I forget who it was, and it was decided that 30 men were needed to handle the traffic by reason of the caravans.

Q. To handle the traffic or the caravans, which is it that you mean, Mr. Witness?

A. Put on for the enforcement of the caravan law, and the traffic. In other words, the caravan law necessitated 30 men to be stationed and to handle the traffic and additional duties.

Q. Captain, the mere fact that the Caravan Act was passed in 1936 did not increase the traffic in that district, did it?

A. No. It did not increase the traffic.

Q. You know it decreased the traffic, do you not?

A. I have no figures on that.

Q. When were these officers placed on duty? Do you have to use the memorandum?

A. I had the assignment for September 17, 1937.

Q. Was that about the time that you prepared the figures for the purpose of presenting them to the court?

A. No, sir. These men went to school and spent 30 days at the highway patrol school, and then they were assigned after the school.

Caravaning is not the heaviest during the summer months. It is the heaviest during the fall about this time, that is from my own recollection. I haven't checked the figures. These 30 men were assigned to steady work on the 17th day of September. Prior to September 17, 1937, we had arranged to handle the traffic, particularly the caravan problem, by taking from the valley counties certain men and assigned them to duty. The number would vary. I think we took 12 or 14 from the various counties. Those were in addition to those that were assigned to that district seasonally. [fol. 138] Those men came from counties like Placer County, and their headquarters are at Roseville, and as the summer breaks we take the men from the lower country and send them to Lake Tahoe or Truckee or some of those counties, and assign them for summer detail. That was their regular summer assignment. We had additional summer assignments this year over last year, one additional man at Truckee and two additional on the south end of the lake—three men, where there was originally one. There were 8 men during the summer. The seasonal duties and for those additional men starting in September. They usually come down one at a time. About the middle of September, two more seasonal employees will be out. I think there are 3 there at the present time. The 30 men are to handle the caravan problems all over the state. I have 12 men assigned in my district, 12 altogether. Some are working out of the Sacramento office under me, and not working in the mountain areas. Two of them are working directly in the Sacramento office. The two in Sacramento are not patrolmen but the rest are, and are actually doing patrol duty. One is located in Modoc County; one in Lassen; Eldorado and Placer. Modoc County is the county farthest north and east in California. Caravans operate on the Yellowstone Cut-off and the road coming from that section in that county. I have never caught any units of more than one on that route.

Q. What would the patrolmen be up there for; would it be for the purpose of attempting to collect any fees which might be due the State of California, for automobiles transported into this state for the purpose of sale?

A. No, sir. He is not allowed to collect fees on the highway.

Q. Would it be just for the purpose of assisting in the handling of the traffic?

A. Yes, sir; assisting and aiding in the handling of the general traffic.

Q. And how many cars have come over that highway, if you know, since the enactment of this law, for the purpose of sale or resale—in Modoc County?

[fol. 139] A. I don't know.

Q. Do you know of one?

A. Yes.

Q. Do you know of more than one?

A. Yes.

Q. How many?

A. I don't know. I had a few reports. But I am unable to say.

Immediately west is Siskiyou County. In that county cars are caravaned over Highways Nos. 99 and 299. Those cars originate in Oregon, New York, Michigan, Illinois and various states; some from Oregon and some from Washington. The extra man that I put in Siskiyou County is working under Captain Daley at Yreka. There are other men in Lassen County and territory. Automobiles are caravaned in fleets over Highway 395 which goes through Susanville and Highway 20 in that county. There is a fleet movement or the caravaning of cars over that highway. There are possibly 200 cars, in small fleets. 10 to 20 cars in each fleet. I know that of my own knowledge. That creates a traffic problem in that county from the summit out of the mountains. 200 cars enter at that side of Lassen County and Sierra County, about three miles of Sierra County, or the first three miles. Those cars originate at the Graham factory at South Bend, Ind. The caravaning there has been going on for a year and a half, and runs from 15 to 20 cars, and sometimes 25 in a fleet.

Q. I am asking you particularly concerning the situation since the enactment of this law on July 2nd, how many fleets of cars have moved there?

A. I know of no fleet movement since the enactment of the law.

Q. Do you know of any movement in the year 1937?

A. I do not believe there was, no.

Q. Well, what was the purpose of adding two additional offices, that you speak of, in Lassen County, where there were no fleet movements or caravans of cars in 1937?

[fol. 140] A. The increased traffic and a few caravans recently came through there.

The single caravan car constitutes a problem in one sense of the word, because they send out young men, young fellows between 18 or 20 years of age, driving the car, and some have never driven over mountain roads, and they drive for hours and are very tired and sleepy. They do not own the automobile, and there is no responsibility upon them. That is not true of all drivers in California. Occasionally that happens. But they are more or less responsible, when they own their own cars, and the majority of them have their families with them and they feel more responsibility.

Another of these 12 men is at Truckee. We have two men at Truckee at the present time. We have five men who are registration clerks assigned to the border station at Truckee. The duties at Truckee are handling traffic on the highways, assisting the man there, and the men work eight hours ordinarily. I do not know how many fleet movements there have been out of Truckee since the enactment of the last caravan law. We have had numerous caravan and fleet movements. I have seen the reports, but I can't tell you the number. I know of the fleet movements going through Truckee only from reports from the men who work under me.

Q. We have accounted for five officers. Where are the balance of the seven located?

A. The south end of the lake there are an additional three.

Q. Lake Tahoe?

A. Highway No. 50. However, I believe two of those are out of there now.

Q. When were they placed there?

A. Last spring: early last spring.

Q. I understood you to say that these additional 30 patrolmen, of which you had 12, were necessary and were employed after the enactment of the Caravan Act?

[fol. 141] A. No. The 30 men are young fellows assigned back to the counties and previous to that the older men were assigned to their respective stations and these young fellows were merely to replace the old men who were taken out.

Q. Were they placed on in the spring, or placed on after the enactment of the law? You can answer that yes or no.

A. Some were placed after the enactment of the law.

Q. How many after the enactment of the law?

A. I can state three after the enactment of the law on Highway 50,—Placerville, and the south end of the lake.

Q. So that after the enactment of this law, which was on July 2, 1937, you have three additional patrolmen assigned to your department in Northern California?

A. What do you mean by "assigned"?

Q. I presume they were sent up there for the purpose of assisting you in your duties.

A. Yes, temporarily.

Q. There were three of them instead of twelve, isn't that correct?

A. Three were located on Highway No. 50; Truckee had two, and then through Susanville. There were ten or twelve men for in and around the mountain territory, and some of them were in there for 30 days and some for 60 days and some were there all summer.

Judge Wilbur: What counsel is trying to ascertain is whether the enactment of this law caused an increase of your force.

A. Yes, sir; it did. We sent up additional men for the service, for the purpose of checking caravans and handling traffic.

By Mr. Penney:

Q. How many were there that came up there for that purpose?

A. I believe there were eight since the Caravan Law was enacted.

Q. Those eight are included in the figure of 30 that you have on the sheet of paper, is that right?

[fol. 142] A. Yes, sir.

Q. Were these eight on there before the Act went into effect, and on duty?

A. Yes. All of the men were on duty before the Act went into effect.

Q. Then for the purpose of the record eight men out of the 30 assigned to your department were on duty prior to the enactment, or the effective date of the Caravan Act of 1937?

A. Yes, by taking them out of the counties and replacing them by the assignment of new men.

Q. Then eight of the men simply replaced the men that you had on duty at that time?

A. Eight new men replaced those men who were moved to the mountain counties.

Q. No additional patrolmen were sent to your division to assist you in the enforcement of the Caravan Act?

A. Yes; there was.

Q. Captain, were these eight men which you put on on that district seasonal employees or regular employees put on in that district for the purpose of general highway policing?

A. They were regular employees, but a greater number of them were assigned because of the Caravan Act than previous.

Q. They were placed on there for the purpose of collecting the fees?

A. We are not allowed to collect fees.

Q. Seeing that fees were collected?

A. To assist in checking, handling in general and reporting and supervising the caravan operations.

Q. Those were the sole duties of those?

A. Yes, sir.

Q. And one of those was in Modoc County?

[fol. 143] A. Yes, sir.

Q. And one in Siskiyou County.

A. Yes, sir.

Q. Two in Lassen County?

A. One or two, I am not sure which. I know one, but I am not positive as to the second one.

Q. That makes four. Where are the others?

A. On Highways No. 50 and No. 40, in the vicinity of Truckee.

Redirect examination:

We are advised in advance by the Nevada State Police when caravan cars will come through on the principal highways. We are usually advised from Reno and Winnemucca, or north, whichever way they come. It would be advisable to send a policeman and where you have a fleet of cars, in view of the movement over the highway.

Examination by Judge Cosgrave:

This problem created by what we call the caravaning of cars has existed for a good many years. The number of

cars caravaned in has remained about stationary during the present year. The problem is a little worse now due to the increase of registration in the state and about 20 per cent increase of normal flow of non-residents, along with the caravans, and that is an additional hazard on the highway. I could not say how recently I have seen a caravan as I work pretty well in the office. I have seen caravans on numerous occasions—I have seen as many as 60 cars in a caravan, 30 hook-ups. By that I mean 30 cars pulling 30 other cars. The tendency is for the cars in the group to keep together and that is where the problem comes in—the tendency to keep together on the highway. With reference to the cars in the snowdrift, there were no other cars but caravans. Hook-ups and pulling one another, and no chains, and stuck in the snow and could not move, and slid off the side of the road. I do not recall a single car driven by itself was in it.

[fol. 144] Judge Cosgrave: On how many instances or occasions do you remember anything of that sort?

A. Only that particular one, because I immediately issued orders that no cars would be allowed to leave Truckee with hook-ups without chains.

That particular experience could have been avoided by efficient regulations by the patrolmen if we had a patrolman at that time of the year. I do not know whether we had one or not.

With respect to the allocation of funds, the expenses of the department to this problem of collecting for caravaning, to my knowledge no one has made a study of it further than what the accounting department has given as the actual expenses and additional help and equipment required.

FRANK B. ENCH, called as a witness on behalf of defendants, being first duly sworn, testified as follows.

Direct examination:

I am supervisor of the branch offices, Division of Registration, Department of Motor Vehicles. I am stationed at Sacramento. In a general way my duties in the office are in connection with the registration and caravaning of cars, and handling of any problems which have arisen, or any

technical problems which arise in the branch offices. In connection with these duties I know who is employed in the Sacramento office in the Division of Registration, in connection with the administration of the 1937 caravan statute and I know the amounts paid to them. I know this of my own knowledge. There is one typist, or one girl that has been assigned to type these records, and then there is one proofreader in the office to proofread the records; then we have a file clerk who files the statistical cards and those records in the files, then we have the duplicating operator and then the junior stenographer, and by the duplicating operator as shown on this Exhibit No. 4, or Exhibit No. A, down from the page No. 4, the items all the time of the particular people are in Sacramento, but we have clerks in the branch offices who are devoting a part of their time [fol. 145] to this purpose a' ' we endeavored to arrive at an estimate, and that is only an estimate of the cost that we have assigned to the total time, or one clerk in the first four brackets, which is less than the time mentioned amount actually to the time consumed in the work by the state. Regarding the last four items, the woman and one man in my particular office, and the statement of the time they are devoting to this work, is correct. The total amount paid per month is $675.75.

Cross-examination:

The item disbursed is an estimate on my part. That is true of the particular item covered by "Proofreader" and the item "File Clerk". The file clerk devotes all her time handling engine files, statistical files and all registrations which come in and out of state registrations within the 30-day period, due to the present Act, and she makes it a particular check as to the caravaning, if at all, for registration within 30 days of the date of the entry, and that is an additional burden upon the registration and adds to the expenses.

Q. Those are mostly single cars?

A. I cannot say as to that. As the applications come in and from various parts of the state, and if the date of the application shows that the application is made within 30 days of the date of entry, it starts the matter, and then we have the proposition of whether or not it is actually a caravan car.

The junior stenographer writes the formal letters and letters in connection with the caravaning of cars. That is not an estimate. She is in my office and devotes all of her time to that work.

With respect to the intermediate secretary, my personal secretary. That was just simply an estimate.

With respect to Supervisory—Nr. Registration. That is an estimate of the amount of time devoted.

The time of the legal advisor is an estimate of the amount [fol. 146] of my time. I am a practicing attorney. I am not an attorney for the Department.

Redirect examination:

These estimates are based upon my actual observations within that Department.

WALTER P. GREER, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct examination:

I am District Inspector of the California Highway Patrol, with headquarters in Los Angeles. I have charge of the caravan enforcement in Zone 1, charge of the border stations in the south, and district inspector for Los Angeles county. I devote 50 per cent of my time to the administration of the Caravan Act of 1937. My duties, since the new Act became effective, are mostly clerical in the office. I have made trips to the desert to check over with the men the various reports and instruct them how to proceed. I have under my charge the border or patrol stations in Southern California, Daggett, Yermo, Fort Yuma and Blythe. I have five men at Daggett. About 50 per cent of their time is devoted to the administration of the 1937 Caravan Act. I have six men at Yermo. I think there are four men in Dunsmuir. I have six men at Fort Yuma and six men at Blythe. Practically the same percentage of time is true as to these men as to the men at Daggett. I do not know the total salaries paid to the men at Daggett. We have one there at the gate that gets $175.00 and the other get $141.00. 50 per cent of the salaries paid the men at Daggett amounts to $372.50. 50 per cent of the salaries of the six men at Yermo would amount to approximately

$437.50. At Fort Yuma, 50 per cent of the salaries paid those men would amount to something in excess of $367.50 as shown here on the Exhibit. 50 per cent of the salaries paid to the men at the station at Blythe would amount to just about $425.00. Prior to 1937 four men were employed at Yermo, three at Daggett, four at Blythe and four at Yuma.

[fol. 147] In my duties in connection with the administration of the Caravan Act I have expenditures for automobile maintenance. I estimate that my automobile expense in connection with my duties in the administration of the Caravan Act of 1937 is about $35.00 per month.

Q. Were there any other automobiles used in connection with the enforcement of this law in the portion of this state under your jurisdiction for which costs were incurred for automobile maintenance?

A. No, sir.

Q. Any motorcycles used in the portion of the state under your supervision in the enforcement of the Caravan Act of 1937?

A. Yes, sir.

Q. Do you know approximately how many were so used?

A. Two.

I guess that the cost of maintaining those motorcycles in connection with those duties is one and one-fourth cents per mile. These motorcycles are used about 2,000 miles per month at one and one-fourth cents per mile. There were three additional motorcycle patrol officers assigned to my division of the state for the particular service in connection with the administration of the 1937 Caravan Act. These three men are assigned to work in different areas in Los Angeles. In connection with my personal duties under the Caravan Act, I incur about $50.00 per month expenses for living costs in traveling. The duties that cause me to incur that expense are calling on the border stations, checking the border stations and the district inspectors assigned to the Southern District and those various duties.

Cross-examination:

Last year I was in charge of the caravan enforcement. I have been in charge of the caravan enforcement from September 1935. My duties prior to 1935 were general

supervisory capacity of the Highway Patrol. I made inspection of the different highways throughout the state. Most of my work at the present time is what is called clerical. I make about one inspection per month on the border [fol. 148] stations. I do traveling otherwise. I have been to San Diego, Sacramento and Kern County.

Q. But your general inspection of the border points are not made solely for the purpose of checking caravans coming into the state?

A. General supervision.

Q. General supervision of the ports of entry, isn't that correct?

A. Yes.

Q. You had three additional men assigned to Los Angeles County the latter part of September?

A. Yes, sir.

Q. Your answer is yes?

A. Yes, sir.

Q. What were their duties?

A. Their duties at the present time are traffic enforcement. They were green then, and assigned to the stations until such time as they could be broken in, and the new men came down from Sacramento from the school, and were assigned to the old timers to break them in.

These men were assigned to general traffic duties in Los Angeles County. Those are the only 3 men that I received here since the 1937 Act went into effect. The balance of my present force at the various stations has not remained constant for 1936-1937. We put on eight men at the border stations, two to each station.

Q. As a matter of fact, that was due to the general increase in traffic coming into the State of California?

A. No, sir.

Q. It was not? Didn't you have an increase in traffic coming into the State of California during that period of time?

A. Yes, sir; possibly.

Q. What was that increase in Southern California at the border stations?

[fol. 149] A. I would say about 20 per cent.

Q. Isn't this 20 per cent increase of traffic coming into the State of California largely or almost wholly tourist traffic coming into the State?

A. I would say that it is a general increase coming through, yes.

Q. There has also been an increase in registration of local cars in California causing you an additional traffic problem, isn't that a fact?

A. Yes, sir. There are quite a number of cars coming from eastern states, particularly a large number from the factories, and over these routes.

Q. Those are local residents going back to the factory to obtain cars and drive those cars back to California?

A. Some of them, yes.

Q. Can you come to any estimate or give us any idea how many thus come in?

A. No, sir.

Q. As many as 15,000 to 20,000 from the factory coming through your stations?

A. I could not say.

Q. Do you have any records?

A. Not here.

Q. Don't you send the plates back to the factory for delivery?

A. No, sir; I do not.

Q. It is a fact that the Motor Vehicle Department does that, of which you have knowledge?

A. That is Sacramento.

Q. Well, you have knowledge of that practice?

A. I have knowledge that there are certain plates going back to the factory, but I do not know how many.

Q. You say that $50.00 living expenses you charged to the duties of supervising the caravaning in this state?

[fol. 150] A. I charged about $50.00 per month. That covers trips throughout the southern part of the state.

Q. To what particular fund?

A. How is that?

Q. To what particular fund?

A. That work I do; going to stations, calling upon district inspectors and captains in Southern California, and instructing them with respect to the caravan enforcement and the bulletins coming from the office.

Q. That is not solely for the purpose of instructing them with respect to caravans, however?

A. It is a general duty.

Q. Just a general duty?
A. Yes, sir. It takes it all in.

Redirect examination:

All of the men of the highway patrol who are sent to Southern California for actual patrol duty are not under my supervision. I do not know anything about what men are sent to other portions of the Southern District for actual patrol duty.

Plaintiffs' Rebuttal Testimony

AL ASHER, called as a witness on behalf of plaintiffs, in rebuttal, being first duly sworn, testified as follows:

Direct examination:

I am one of the plaintiffs in this action. I have been engaged in the caravaning of automobiles into the State of California since 1930. During that period of time, I have caravaned into the State of California over 4,000 cars. I have personally had charge of caravans coming into this state. I have personally supervised eight or ten, or possibly, eleven. I know the manner in which the drivers are selected.

Defendants' counsel takes the witness on his voir dire.

I have accompanied and taken charge of between eight [fol. 151] and a dozen caravans. My residence is in Los Angeles. The majority of my cars come from Detroit. They are all used automobiles. Our caravans consist of from 19 to 25 automobiles. I have had half a dozen permanent agents to purchase cars for caravaning but at the present time I haven't any. I have purchased perhaps a dozen caravans personally myself and those caravans were conducted out here by myself.

Direct examination resumed:

Q. These caravans which you personally conduct, do you know the manner in which the drivers are selected?
A. I have selected them myself.
Q. How were they selected?
A. You mean the common practice?

Q. How do you select those?

A. I handle it in this way: I run an advertisement in the newspaper in Detroit, advertising for drivers to drive a car to California, and when the drivers appear, I personally interview them myself, and question them, and select possibly not over half of the applicants.

Q. Do you have any age requirement?

A. The driver must be 21 years of age, or over, and must have a driver's license or a chauffeur's license in the state from where we start.

Q. Do you have any preference as to the ages?

A. Decidedly.

Q. What was the preference?

A. I would prefer men from 30 to 40 years of age.

Q. What was the average amount that you spent in the purchase of those cars?

A. Those cars would cost from $600.00 to $1,000.00 at least.

Q. Did you carry any public liability on those cars during the period that they were being operated on the highways?

A. Yes; we do.

[fol. 152] Q. What insurance do you carry?

A. Ten thousand to twenty thousand public liability, and I think five thousand property damage.

Q. Do you carry collision on your own cars?

A. None whatsoever.

Q. During the time that you have caravaned cars into California, have you ever had any claim made for any property damage occasioned by your cars while in transit to this state?

A. Yes, sir.

Q. How many claims?

A. Two claims. Two claims were made and were paid by our insurance company; one was in Oklahoma, and the other one was in the City of Detroit, and both of them, or each of them was less than $50.00 per claim.

Q. Will you relate to the court the manner in which you personally conducted the caravans of your automobiles to California, and I have particular reference to the ones that you personally supervised yourself.

A. I don't know that I just get your question exactly, but it is my custom to put a man in front, and I have had my

son in the lead, with instructions to set the pace, and govern the speed of the caravan on the road, and I ride on the rear end with a single automobile to take care of all of the details and keep the drivers in line and obeying the speed laws, and also keeping a sufficient distance apart, and their instructions were to keep at least 150 feet apart, or the length of two telephone poles apart at least, and not to park except in proper places, and to keep on the right side of the highway.

Q. During the period of the time that you have been caravaning cars into California, have you ever had a highway patrolman as an escort of any of your caravans——

Mr. Palstine: As to your knowledge?

By Mr. Penney:

Q. Of the ones that you personally caravaned?

[fol. 153] A. No.

Cross-examination:

I did not investigate any of the references given by these applicants.

Mr. Penney: I will stipulate at this time that the rest of the plaintiffs, if called, would testify in substance and effect the same as Mr. Asher in relation to the selection of the drivers of these cars and the caravaning of the cars under their supervision.

Mr. Palstine: I do not want to limit it to any particular operation as to Mr. Asher, but I will stipulate that if these witnesses, if called, would testify substantially as Mr. Asher has testified in regard to any of the subject matter presented.

Mr. Penney: That is entirely satisfactory and acceptable.

Judge Cosgrave: That is, that they were never accompanied by the highway patrolmen, is that correct?

Mr. Palstine: It is not a fact.

Mr. Penney: The witnesses will so testify.

Mr. Palstine: I do not believe Mr. Asher so testified.

Judge Wilbur: Yes; he did.

Mr. Palstine: Well, I will stand on the record.

Mr. Penney: I will accept the stipulation as they have given it.

PAUL GRAY, called as a witness on behalf of plaintiffs, in rebuttal, being first duly sworn, testified as follows:

Direct examination:

I am president of Paul Gray, Incorporated. I am one of the plaintiffs in this case. That company is engaged in the buying and selling of automobiles and in the conduct of that business we transport cars into California for sale. The net profit that we make on each transaction is approximately $10.00 per car. That does not deduct the license fee of [fol. 154] $15.00. I am testifying about the law and up to the time that it went into effect. In 1936, I brought in 188 cars, all from Detroit, Michigan. They belonged to the corporation. Prior to the enactment of this law in 1937 I received 78 or 79 cars from Detroit, Michigan and from St. Joseph, Missouri. With the exception of 10 or 12 consignments, the cars received in 1937 were all registered in the name of Paul Gray, Incorporated. Since the enactment of this Act in California, from the 2nd day of July up to the present time the law has necessarily cut down the volume. I have to make a very careful selection of cars in order to get automobiles that I can make a profit on. I cannot obtain the same type of cars in the market in California that I can obtain in the eastern states.

Cross-examination:

My books last October and November show that they were the best months that we had on used cars. The reason that I have only caravaned 19 cars since the Act went into effect was because of the statute. During the same period during 1936 I caravaned approximately 20 cars per month.

Q. What is the difference this year over last year that causes you to state that the reason that you caravaned only 19 cars, was the passage of the 1937 Act.

A. It is in the profit on automobiles this year as compared with the profits earlier, in proportion to the profits within the last year.

Q. You would say that one of the reasons at least is the differential between the price at which you can buy used cars and sell them in the west, as distinguished and justify their being caravaned here for the purpose of sale?

A. That is correct.

Mr. Penney: I can offer a stipulation that the rest of the plaintiffs, if called, would testify in substance and effect the same as Mr. Gray has testified in regard to the driver of each car, and would testify in substance, as Mr. Gray has testified on the subject matter given in his testimony.

[fol. 155] Mr. Palstine: Subject to our objection as to the materiality of such testimony, and as to the competency and relevancy, and the objection that it calls for a conclusion of the witness and is not the best evidence, we will stipulate that the other plaintiffs, if called, would testify the same as Mr. Paul Gray.

Mr. Penney: We will accept that stipulation. Will the court rule upon the admissibility of the evidence and on the objection?

Judge Wilbur: Objection overruled.

Mr. Palstine: Subject to our objection as to the materiality of that evidence, we would stipulate that somewhere around 170,000 non-resident permits were issued this year, up to date, to persons driving cars for pleasure purposes into the State of California.

Judge Wilbur: Objection overruled.

STIPULATION RE TESTIMONY OF E. RAYMOND CATO

Mr. Penney: We stipulate that the testimony on the E. Raymond Cato given at the time of the other hearing may be read into eviden from this brief as to the additional cost incurred by the state at the time the 1935 Caravan Act was enacted. That is for the purpose, your Honor, perhaps argumentative, I grant you, but for whatever weight it may have with the court, inasmuch as we have now established that the caravaning of cars has remained fairly constant during this period of time.

Mr. Palstine: We will stipulate that E. Raymond Cato testified, in substance, as will be read into the record, but as to counsel's comment as to the effect of the testimony, we do not stipulate that.

Judge Wilbur: We will assume that it is read and proceed with the other evidence.

Mr. Palstine: May we have identified the portion to be incorporated?

(Counsel informs reporter of particular sections to be in-
[fol. 156] corporated in the record.)

Mr. Penney: And that this evidence may be considered by the court for whatever value the court may give to it.

Mr. Palstine: It is not stipulated to be a fact, and so that there will be no question about this, we want it understood that Mr. Cato would not testify at the present time, if called, as mentioned here, but that he did so testify at the former hearing.

(Portion of record referred to, reads as follows:)

"(fol. 95) In January or February of this year (1935), I assigned three additional highway patrolmen to Imperial county, two to Riverside county, four to San Bernardino county, and one to a territory in Nevada county east of Truckee. Since then I have assigned additional men who were appointed only a few days ago, i. e., two additional men to Nevada county, two to Placer county, one district inspector to the southern portion and one to the northern portion of the state. I appointed the district inspectors for the purpose of coordinating the work between the traffic officers and the superior officers in those communities. The appointment of the district inspectors was on account of caravaning, but the assignment of additional officers was not entirely due to caravaning, but to the increase of traffic in recognition of caravaning, that is, we found great fleets of cars coming through and at this time there was no caravan law requiring them to travel fifty feet apart and wrecks were reported. We had numerous complaints from citizens being crowded off the highways.

"With regard to the condition which existed just preceding the passage of the act and the peculiar hazards or dangers attending the practice of caravaning at the time of and just prior to the passage of the act, maybe I can better explain it this way: If we have caravans of people who wish to go from place to place we assign a traffic officer, from one to three men to see that they move with expedition and safety. These caravans coming in have no one to govern them coming into the state, and we put an extra patrol on [fol. 157] the highway to see that there is safety on the highway, not alone by reason of the fact that there was a caravan coming in, but the increased traffic on the highway. I am now (fol. 96) speaking of a condition that existed prior to the 6th day of July, 1935.

"From the first of the year (1935) until the 6th day of July, 1935, when the Act was passed, I put on approximately

six additional men over the whole state because there were caravans on the road. They get a salary of $170.00 per month. If the caravaning business were entirely eliminated these men could be dispensed with on these routes. I would not dispense with their services. I would remove them to other locations to work because I need more men. I had to assign an additional captain to the northern territory within the last two weeks also. There are three men whose specific duty is the enforcement of this law; that is, since it was in effect."

The following are the affidavits admitted in evidence at the trial as described on pages 2 and 3 of this statement:

[fol. 158] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF RAY INGELS—Filed October 8, 1937

STATE OF ILLINOIS,
County of Cook, ss:

Ray Ingels, being first duly sworn upon oath, deposes and states:

I am a resident and citizen of the State of California and have been such for many years last past. I am now, and have been since the first day of August, 1935, Director of Motor Vehicles of the State of California, and since the first day of August, 1935, I have resided at and have had my office at the City of Sacramento, California. For approximately three months prior to August 1, 1935, I was a member of the Highway Commission of the State of California, and prior to that time was engaged in farming in Mendocino County, California.

While I was a member of the Highway Commission, and particularly since I have been Director of Motor Vehicles, I have become familiar with the methods of marketing and distributing motor vehicles throughout the State of California; and I have become familiar with the business commonly known as the caravaning of automobiles, which consists in the moving of automobiles on their own wheels to take them to an advantageous place for purpose of sale. In this affidavit when I use the term "caravaning" I mean to designate the business or practice of moving automobiles on their own wheels and either under their own power or

towed by another automobile for purpose of sale, either singly or in two-car hook ups and either in fleets or groups of two or more automobiles, or the movement of one automobile singly or two cars hooked together without any other accompanying cars. I know that the practice of caravaning has grown up in the past five years in so far as any substantial volume of movement is concerned. Prior to becoming a member of the Highway Commission I had, from time to time, observed caravans of automobiles on the highways and had known about the business of caravaning in a general way. Since becoming Director of Motor Vehicles I have gained a great deal more knowledge on the subject. I have talked with dealers and others engaged in the business of caravaning, about the business, and I have talked with men who have been employed as drivers of caravaned cars. The Department of Motor Vehicles, through its Division of Enforcement and through its Division of Registration has made investigations of the practice or business of [fol. 159] caravaning, and I have obtained knowledge of such business through such investigations.

The Department of Motor Vehicles is divided into four general divisions. One is the Division of Registration, which has to do with the registering and, in general, with the collection of license fees of all motor vehicles required by law to be licensed or registered in the State of California. The Division of Enforcement is in charge of the Chief of the Highway Patrol and the duties of such division are, in general, the enforcement of all of the laws relating to motor vehicles of the State of California, which includes the enforcement of the laws regulating traffic upon the highways and the enforcement of the laws relating to the collection of all license, permit and registration fees of motor vehicles. There are also a Division of Accounting and a Division of Drivers' Licenses in the Department of Motor Vehicles. The Department of Motor Vehicles, through its above described divisions, is in charge of the administration and enforcement of all of the laws relating to motor vehicles in the State of California. By law the Director of Motor Vehicles is required to administer and enforce the vehicle code and all other laws pertaining to the operation of vehicles or the use of the highways.

From the knowledge that I have gained by personal observation of the business and practice of caravaning in the State of California, and from my conversations with parties

engaged in such business and drivers of caravaned cars, and from the knowledge I have gained as Director of the Department of Motor Vehicles, I know the following facts to be true: For about the past five years the business of caravaning of automobiles on the California highways has increased in volume each year, except as the acts regulating caravaning passed by the California legislature in 1935 and 1937 may have affected the volume and movement of caravaned cars. The movement of automobiles in fleets or groups is largely confined to the movement of automobiles on their own wheels for purpose of sale, originating outside of the State of California and terminating within the State of California. In addition to the movement from without to within the State the only other movement in fleets or groups is the occasional movement of automobiles in fleets or groups for the purpose of sale from the Los Angeles area to the San Francisco area, or vice versa, and the occasional movement of automobiles in fleets or groups for purpose of sale from the Los Angeles or San Francisco areas [fol. 160] to points outside of the state. To my knowledge there is no movement of used cars from within the State of California to without the state.

Cars that are moved from assembly plants in California to the place of sale on their own wheels are not moved in groups or fleets, nor in two car hook ups but are moved singly a car at a time, such movement being confined in all except a comparatively few instances to an area of about a fifty mile radius around such assembly plants, with occasional movements as far as 100 miles and a very few beyond a hundred miles.

The reasons for the movement of automobiles as above described in fleets or groups on their own wheels for purpose of sale are as follows: Automobiles that are to be moved into the State of California originate in states of large population east of California where used cars can be cheaply purchased or where new cars are manufactured. Such points of origin are principally midcontinent points. This necessitates a long movement to destination. The owners of the cars therefore originated the system of gathering together a fleet of vehicles so to be moved and putting them in charge of a caravan manager and a mechanic to supervise their movement to California. In the case of

the movement of used cars, it is particularly desirable to have the fleet accompanied by a mechanic who can make necessary repairs en route. Drivers of caravaned cars are often unacquainted with routes and it is desirable and necessary to have them accompanied by one who is familiar with routes and can be relied upon to see that the vehicles are brought to destination. Most of the drivers of caravan cars are employed for the one trip only from eastern points to destination within California. They are obtained by advertising or other solicitation. Various arrangements for compensation for making the trip are made with them, but in most cases one element of compensation the drivers consider of value is the opportunity to receive transportation to California. After arrival in California such drivers remain there and do not return east. The caravan manager takes a fleet of cars with drivers of that type in charge and buys gasoline and meals and pays other expenses of the trip. The management of a group of drivers and cars by one experienced individual results in a saving of expenses because of the collective handling of the finances of the trip.

Because of the reasons which have led to the movement [fol. 161] of vehicles in fleets there are comparatively few cars that are moved from without the State of California to within the State for purpose of sale singly and not in a fleet. For some of the same reasons when a number of cars are to be moved from the Los Angeles area to the San Francisco Area, or vice versa, on their own wheels for purpose of sale, dealers find it expedient to move them in fleets. The same is commonly true to the movement of vehicles for purpose of sale moved on their own wheels from California points to without the state.

I have personally talked with drivers of caravan cars who have brought such cars from without the state to within the state and they have told me of driving sixteen or eighteen hours out of twenty four in order to arrive in California in the shortest possible time. They state that as a general practice stops for meals are irregular and the time allowed for meals is short. Drivers that I have talked with and observed immediately upon their arrival at destinations in California have shown evidence of fatigue and weariness and have expressed themselves as very tired from the long trip.

I know the geographical location of the counties of California that are placed within zones 1 and 2 by Section 8

of Chapter 788, California Statutes of 1937. I know that from one point to another within a single zone there is no movement of automobiles upon their own wheels for purpose of sale in fleets or groups. The reasons which induce the movement of vehicles in fleets from without to within the State of California and vice versa, and from one zone to another in the state, do not obtain in the movement wholly within a zone. Such movement, aside from the movements from assembly plants, consist of the occasional movement of single cars from one point to another.

The movement of single cars not in fleets upon their own wheels for purpose of sale in California is conducted almost entirely between points within a single zone. Cars so moved are driven by California residents who are mechanics or chauffeurs regularly employed by the dealers owning such cars. Such movement in its entire length necessarily consumes only a few hours and the drivers are not fatigued during any portion of the journey.

Where vehicles are moved in fleets it is the practice to stop the entire fleet when one vehicle has mechanical trouble and requires repairs. This is to keep the fleet together under the supervision of the caravan manager and to keep [fols. 162-163] it within access of the mechanic. A fleet also stops for meals or when for any other reasons it is necessary for any one car to stop. This frequently results in causing a traffic tie up on the highway because when a fleet stops the rear cars will pull out into the adverse lane. Even when a fleet is stopped upon the highway and all vehicles are in the right lane vehicles approaching from either direction have difficulty in passing the fleet because of its occupancy of a long stretch of one of the traffic lanes. This difficulty is accentuated when the fleet is in motion on the highway.

Where cars are joined together by a tow bar in what is commonly called a two car hook up the braking mechanism of the two cars is not connected, hence the braking mechanism of the towing car must be relied upon to bring both cars of a hook up to a stop or to slow them down. It is common practice to disconnect the transmission of the rear car to facilitate ease in towing. For this reason the battery of the rear car is not charged in the normal way during the entire trip. In order to save the battery it is common practice not to turn on the rear light of the towed car. The presence of a towed car to the rear of the car in which the driver

is riding obscures the rear view of the driver. The towed car has a tendency to swing out of its traffic lane on curves or when the hook up is traveling at high speeds, particularly on roads that have become a little bit rough. The towed car also skids upon curves.

Ray Ingels.

Subscribed and sworn to before me this 5th day of October, A. D. 1937. A. F. Hucksold, Notary Public, Cook County, Illinois. (Seal.)

[File endorsement omitted.]

[fol. 164] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF E. E. EDENHOLM—Filed October 8, 1937

STATE OF CALIFORNIA,
County of Los Angeles, ss:

E. E. Edenholm, being first duly sworn, deposes and says:

That he resides at 731 West 18th Street, Los Angeles, California.

That he is now, and for twenty years last past, has been an auditor and accountant; that from July, 1934, to January 8, 1937, he was in charge of the books and accounts of the firm of Asher & Ponder; that from June, 1934, to January 8, 1937, said firm engaged in the business of buying and selling used cars; that approximately ninety-five per cent (95%) of the business of said firm was as brokers of used cars which they purchased outside of the State of California and caused to be driven on their own wheels into said state for sale to used car dealers therein; that in performing his duties affiant kept records of all cars purchased by said firm outside of California and driven on their own wheels into said state for purpose of sale and kept records of the sales of said cars, and kept records of the employ-
[fol. 165] ment of drivers of said cars and others engaged in said business; that affiant knows the manner in which the operations of said firm were conducted.

That most of the cars so purchased by said firm were purchased in Texas, Oklahoma and Louisiana; the purchase

would be made by an agent of the firm; that said agent also made arrangements in the states where said cars were purchased for drivers for driving said cars to California; that when sufficient cars had been purchased to form a fleet of from six to twenty, or more, cars, said agent would form a fleet with said cars, usually acting himself as caravan foreman, and would proceed with said cars, over the public highways, to California; that the usual mode of operation was to join two cars together with a tow-bar, there being a single driver for such two-car units; the drivers were practically always persons who were seeking transportation to California; that during the first few months of operation of said business, said firm did not pay any of its drivers other than the caravan foreman, any regular wage or compensation; that while en route said drivers were furnished with meals; that said drivers were not provided with or furnished with funds for lodging while en route; that they usually slept in the cars which they were driving; that when they arrived in Los Angeles said drivers were given two or three dollars and released.

That after the first few months of operation of said business, the National Recovery Administration required said firms and similar operators to pay such drivers at the minimum rate of $15.00 per week; that thereafter, said firm, although still selecting the drivers in the same manner, agreed to and did pay them at the rate of $15.00 per week but re- [fol. 166] quired said drivers to pay from said wage all of their personal expenses, including meals and any lodging, during the course of transportation; that it usually required four days on the road for such deliveries to Los Angeles; that this method of compensation was continued until said National Recovery Administration statute was declared unconstitutional by the United States Supreme Court on or about —— —, ——; that thereafter, and until said firm ceased doing said business, as aforesaid, said firm reverted to the original method of hiring and compensation as previously stated herein.

That the used cars so purchased for caravaning into California were generally cars which could not be readily sold in the state where they were so purchased; that the person purchasing said cars in said other states would usually register the same in the name of said firm of Asher & Ponder, although said purchaser was usually the owner and said

firm merely the wholesale brokers of said cars in California.

That at least eighty per cent (80%) of the cars so transported were moved in fleets of six or more cars; that during the time said firm engaged in said business approximately seven thousand (7000) cars were so purchased and driven into California; that said firm had several damage suits brought against it on account of the negligent operation of said vehicles en route to California, and upon numerous occasions the bodies and fenders of said vehicles received severe damage en route.

That the operations of said firm consisted exclusively of such caravaning of motor vehicles into California from other states, except that approximately 1500 of said 7000 cars were sold by said firm in Los Angeles to used car [fol. 167] dealers whose places of business were in that portion of California lying northerly of Fresno, California; that such sales were usually in groups of six or more vehicles; that said dealers, after so purchasing said vehicles would transport the same to their places of business by causing them to be driven upon their own wheels over the public highways of the State; that such movement, like the movement from outside of California into said State, was usually made by one car towing another, and by grouping said two-car units into fleets or caravans of six or more cars.

That affiant is familiar with the methods of operation of other persons and firms engaged in the business of driving motor vehicles from other states into this State for the purpose of sale; that the methods of said persons and firms are in general the same as the methods of said firm of Asher & Ponder as hereinabove related.

E. E. Edenholm.

Subscribed and sworn to before me this 7th day of October, 1937. Kathryn Buckman, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 168] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF M. F. SHAW—Filed October 8, 1937

STATE OF CALIFORNIA,
County of Los Angeles, ss:

M. F. Shaw, being first duly sworn, deposes and says:

That he is a resident of Los Angeles County.

That he is now and at all times mentioned herein has been employed as District Manager of Pacific Motor Trucking Company; that as such manager he is in charge of the operations of said company in that portion of the State of California lying southerly of San Luis Obispo and southerly of and including Bakersfield.

That said company, through its Southgate Auto Transport Division, engages in the transportation of motor vehicles over the public highways within the above described area in California, for the General Motors Corporation, Southern California Division.

That in such transportation, said automobiles are delivered from said General Motors Corporation assembly plant at Southgate, California, to the respective consignee dealers; that said automobiles so transported are either placed upon trucks which carry said automobiles over the public high-[fol. 169] ways to their destination, which method of transportation is known as and hereinafter referred to as "truck-away" deliveries, or are driven on their own wheels upon the public highways to their destination, which method of transportation is known as and hereinafter referred to as "drive-away" deliveries; that "drive-away" deliveries from said plant are usually for delivery within the Los Angeles Metropolitan area, although in a few instances "drive-away" deliveries are made outside of said Metropolitan Area; that deliveries outside of said Metropolitan Area are usually made as "truck-away" deliveries; that none of the "drive-away" deliveries outside of said Metropolitan area are made by driving said automobiles in groups of three or more;

That all cars transported from said plant by said "drive-away" method are operated singly; that each of said cars is driven by a full time employee of said Pacific Motor

Trucking Company; that each such employee is engaged solely in such "drive-away" transportation operations, is a regularly licensed chauffeur in the State of California and is under $500.00 bond; that said Pacific Motor Trucking Company furnishes each of such drivers with return transportation from the point of destination of each delivery, or with funds with which to obtain such transportation.

M. F. Shaw.

Subscribed and sworn to before me, this 7th day of October, 1937. E. L. H. Bissinger, Notary Public in and for said County and State. (Seal.)

[fol. 170] Driveaway Deliveries by Pacific Motor Trucking Company from Southern California Division of General Motors Corporation, Southgate, California, from January 1, 1937, to June 30, 1937

Destinations	No. Deliveries	No. Cars
Alhambra, California	69	245
Banning	1	2
Bellflower	31	95
Belvedere Gardens	50	169
Beverly Hills	71	256
Bishop	1	1
Burbank	29	102
Compton	50	149
Culver City	55	194
Eagle Rock	30	88
El Monte	25	94
El Segundo	3	12
Glendale	86	308
Hemet	3	5
Hermosa Beach	19	59
Hollywood	172	609
Huntington Park	114	399
Inglewood	86	313
Lancaster	1	1
Long Beach	119	444
Los Angeles	1503	5534
Mojave	2	3
Monterey Park	2	8
Montrose	10	30

Destinations	No. Deliveries	No. Cars
North Hollywood	32	113
Oceanside	3	5
Pasadena	115	425
Redondo Beach	13	45
Red Mountain	1	1
San Pedro	55	197
Santa Monica	54	198
South Pasadena	9	36
Torrance	15	47
Venice	28	110
West Los Angeles	29	107
Whittier	38	134
Wilmington	16	57
Total	2940	10595

[fol. 171] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF W. J. HOLM—Filed October 8, 1937

STATE OF CALIFORNIA,
County of Los Angeles, ss:

W. J. Holm, being first duly sworn, deposes and says:

That he is a resident of Long Beach, California.

That he is now, and during all times herein mentioned has been head of the Traffic Division of the Long Beach Branch of the Ford Motor Company; that at said branch said company assembles Ford passenger cars and trucks for distribution to authorized Ford dealers in Arizona and Southern California, and certain points in Nevada, and Mexico.

That in said capacity he directs the delivery of all new Ford automobiles and trucks from said assembly plant to said points within and without the State. That all authorized Ford dealers within said area receive all Ford vehicles which they sell for delivery at their place of business, from said assembly plant, except that on rare occasions certain of said dealers receive a carload of said vehicles direct from other Ford assembly plants; that true and complete records are kept of all deliveries from said plant; that affiant has

[fol. 172] caused to be made under his personal supervision a study of said records for the purpose of ascertaining the number of vehicles which are delivered from said plant by being driven therefrom on their own wheels, such deliveries being known as and hereinafter referred to as "drive-aways" or "drive-away deliveries"; that attached hereto and made a part hereof the same as though set forth herein in full is a detailed statement showing the number of drive-away deliveries made from said plant during the months of April and May, 1937, and their destination; that each of said vehicles is moved singly upon the highways; that all other cars delivered from said plant during said period were delivered on trucks, by rail, by boat, or other method of conveyance other than by being driven on their own wheels; that said statement is for a typical period of operations of said plant; that the destination of said drive-away deliveries and the manner in which said cars are moved, as shown by said attached statement and as hereinabove stated, are typical of the destinations and manner of moving of such deliveries from said plant throughout the year. That practically all vehicles which were and are driven away from said plant for delivery, were and are driven by a full time employee of the dealer taking delivery; that not to exceed 3% of such deliveries are made directly to the purchaser taking delivery. That it is affiant's intention that such "drive-away" deliveries are never to be made by grouping three or more cars in a train or fleet; that to his knowledge there is and has been no fleet movement of new cars upon the public highways intrastate in California from said assembly plant to the consignee.

W. J. Holm.

Subscribed and sworn to before me this 7th day of October, 1937. C. W. Gerham, Notary Public in and for Said County and State. (Seal.)

[fol. 173] Drive-a-Way Units for the Month of April, 1937

Date	Destination	No. of Cars
2	Beverly Hills	1
"	Flagstaff, Arizona	1
"	St. John, Arizona	1
"	Pasadena	1
"	Long Beach	1

Date	Destination	No. of Cars
2	Mojave	1
"	Lone Pine	1
5	Los Angeles	1
"	Huntington Park	1
6	San Dimas	1
8	Santa Paula	1
"	Randsburg	1
9	Holbrock, Arizona	1
"	Los Angeles	1
"	Fullerton	1
12	Cottonwood, Arizona	3
"	San Diego	1
13	Moorpark	1
"	Huntington Park	1
"	Bishop	1
14	Long Beach	1
"	Indio	1
"	Los Angeles	1
15	Parker Dam	2
"	San Dimas	1
"	Winslow, Arizona	1
19	Los Angeles	1
"	La Habra	1
"	Pasadena	1
20	Long Beach	1
"	Parker Dam	2
21	Victorville	1
"	Long Beach	1
"	Anaheim	1
"	Parker Dam	1
"	Goleta	1
"	Moorpark	1
22	San Bernardino	1
"	Fontana	1
"	Long Beach	1
"	Moorpark	1
"	Pasadena	1
23	El Centro	3
26	Fontana	1
"	Bishop	2
"	Long Beach	1
"	Los Angeles	2

Date	Destination	No. of Cars
27	Victorville	1
"	El Cajon	1
"	Los Angeles	1
"	Long Beach	1
"	San Diego	1
"	Beverly Hills	1
28	Bishop	1

[fol. 174] Drive-a-Way Units for the Month of April, 1937 (Cont'd.)

Date	Destination	No. of Cars
28	Garden Grove	1
"	Pasadena	1
"	Lone Pine	1
29	Bakersfield	1
"	Culver City	1
"	Beverly Hills	1
"	Fillmore	1
"	Covina	1
"	Tucson, Arizona	1
"	Wilmington	1
30	Bakersfield	1
"	Los Angeles	2
"	Bakersfield	3
"	Norwalk	1
"	Bakersfield	1
"	Huntington Park	1
"	Covina	1
	Total Cars	82

[fol. 175] Drive-a-Way Units for the Month of May, 1937

Date	Destination	No. of Cars
3	Long Beach	1
"	Covina	1
4	Long Beach	2
"	Pioche, Nevada	1
"	Lone Pine	1
"	Huntington Park	1
"	Newhall	1
5	Los Angeles	2

Date	Destination	No. of Cars
5	Moorpark	1
"	Fullerton	1
7	Los Angeles	1
"	Long Beach	1
"	San Diego	1
10	Victorville	1
14	Long Beach	2
"	Bakersfield	1
"	Pasadena	1
"	Hollywood	1
"	Wasco	2
18	Covina	1
"	Victorville	1
19	Los Angeles	1
"	Boulder City	1
20	Long Beach	3
"	Goleta	1
21	Long Beach	1
"	Flagstaff, Arizona	1
24	Banning	1
"	Los Angeles	1
"	Parker, Arizona	
25	Long Beach	1
26	Los Angeles	1
"	Long Beach	1
"	Santa Barbara	1
27	Newhall	1
"	San Diego	1
"	Long Beach	1
"	Phoenix, Arizona	1
"	Pasadena	1
"	Beverly Hills	1
28	Long Beach	2
	Total Cars	48

Ford Motor Co.

[fol. 176] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF ROY S. BUSBY—Filed October 8, 1937

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Roy S. Busby, being first duly sworn, deposes and says:

That he is a resident of Los Angeles, California.

That he is now and during all times herein mentioned has been Traffic Manager, Southern California Division of General Motors Corporation, at South Gate, California.

That said assembly plant assembles new Buick, Oldsmobile and Pontiac passenger cars for distribution to all authorized dealers and distributors of said automobiles in Arizona, California, Idaho, Nevada, Oregon, Utah and Washington; that all authorized dealers and distributors of said automobiles within said area receive all cars which they sell for delivery at their places of business, from said assembly plant, or from the Buick, Oldsmobile and Pontiac Divisions in Michigan.

That in his capacity as traffic manager, affiant directs the transportation of all new Buick, Oldsmobile and Pontiac [fol. 177] automobiles distributed from said assembly plant to points within and without the State.

That certain of the vehicles so distributed from said plant are transported over the public highways upon trucks, which method of distribution is known as and hereinafter referred to as "truck-away" deliveries; that certain distributions are made by driving said vehicles on their own wheels over said highways, which method of distribution is known as and hereinafter referred to as "drive-away" deliveries; that deliveries from said plant to dealers within that portion of Los Angeles County, California, bounded on the west by Santa Monica, on the east by El Monte, on the north by San Fernando, and on the south by Long Beach, which area is known as and hereinafter referred to as the "Metropolitan Area" of Los Angeles County, are usually made by the "drive-away" method; that deliveries outside of said "Metropolitan Area" are usually made by the "truck-away" method, or by rail or boat or some other mode of conveyance other than by being driven on their own wheels; that in a very few instances, however, "drive-away" de-

liveries are made outside of said "Metropolitan Area"; that during the period from January 1, 1937, to June 30, 1937, there were 18 vehicles so delivered outside said "Metropolitan Area", and none of said 18 deliveries was made by grouping three or more cars in a train or fleet; that said six month period is a typical period in this regard; that cars delivered on their own wheels within said "Metropolitan Area" are delivered singly or in units of two, three or four cars, only.

That each vehicle driven away from said plant for delivery was and is driven by an employee of the Pacific [fol. 178] Motor Trucking Company, each car being driven by an individual driver.

Roy S. Busby.

Subscribed and sworn to before me, this 7th day of October, 1937. Henry T. Brian, Notary Public in and for said County and State. My commission expires Nov. 18, 1940. (Seal.)

[File endorsement omitted.]

[fol. 179] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF GEORGE D. CRON—Filed October 8, 1937

STATE OF CALIFORNIA,
County of Alameda, ss:

George D. Cron, being first duly sworn, deposes and says:

That he is a resident of Alameda County, State of California.

That he is now and during all times herein mentioned has been employed as Traffic Manager of Chevrolet, Oakland Division, General Motors Corporation Assembly Plant, Oakland. That in said capacity he directs deliveries of all new Chevrolet automobiles and trucks from said Assembly Plant to points within and without the State.

That said Assembly Plant assembles new Chevrolet passenger cars and trucks for distribution to all authorized Chevrolet dealers situated in California.

That said Chevrolet automobiles and trucks are in some cases delivered to points in Central and Northern California by being driven on their own wheels from said Assembly Plant, such deliveries being known and hereinafter referred to as "drive away" or "drive away delivery".

That the usual mode of delivery is by truck, by rail and by boat, and that it is only in cases of shortage of auto- [fol. 180] mobiles or trucks to complete truck or carload units that a dealer's order may be filled in part by "drive away" delivery. That all authorized Chevrolet dealers within the State of California receive from said Assembly Plant all Chevrolet passenger cars and trucks which they sell for delivery at their place of business.

That true and complete record of all deliveries from said Assembly Plant are kept, under direct supervision of this affiant; that affiant has caused to be made, under his personal supervision, a study of said record for the purpose of ascertaining the number of vehicles which were delivered from said plant by being driven therefrom on their own wheels during the period January 1, 1937 to and including July 31, 1937; that during said period there were 675 vehicles so delivered outside the San Francisco-Oakland metropolitan area, consisting of San Francisco, Oakland, Alameda, Albany, Berkeley, Burlingame, Colma, Emeryville, Hayward, Mill Valley, Richmond, San Bruno, San Leandro, and San Rafael.

And that attached hereto and made a part hereof is an itemized list showing the destinations of all of said 675 vehicles and the movement of such vehicles delivered by "drive away" to each of such destinations during said period; and that such period is typical of the deliveries made from such Assembly Plant; that all other cars delivered outside of such metropolitan area from said plant during said period were delivered on trucks, by rail, by boat, or other method of conveyance, other than by being driven on their own wheels.

That all vehicles which were and are driven away from said plant for delivery, were and are driven by a full time employee of the Auto Transportation Division of the Pa- [fol. 181] cific Motor Trucking Company, which Auto Transportation Division is exclusively engaged in the transportation of new automobiles and trucks.

That all "drive away" deliveries were and are made in single-car or two-car lots, each vehicle being individually

driven; that such "drive away" deliveries were and are never made by grouping three or more cars in a train or fleet; that whenever it is necessary to make deliveries of three or more vehicles to the same consignee or group of consignees, such delivery is made by transporting said vehicles upon trucks; that there is and has been no fleet movement of new cars upon the public highways in California from said Assembly Plant.

(Signed) George D. Cron.

Subscribed in my presence and sworn to by George D. Cron, this 7th day of October, 1937. Charles A. Kemp, Notary Public in and for the said County of Alameda, State of California. My commission expires June 16, 1940. (Seal.)

[fol. 182] Drive Away Cars from Chevrolet Motors Corporation at Melrose, California

January 1, 1937 to July 31, 1937

Destination	No. of Cars
Antioch	18
Brentwood	12
Calistoga	5
Carmel	1
Centerville	27
Chico	1
Chowchilla	5
Clear Lake Highlands	11
Clements	3
Cloverdale	3
Colusa	1
Davis	20
Douglas	7
Elk Grove	7
Fairfield	16
Fresno	5
Galt	5
Gilroy	7
Grass Valley	2
Gridley	1
Guerneville	4
Healdsburg	6

Destination	No. of Cars
Hollister	5
Jackson	3
Lakeport	8
Livermore	8
[fol. 183] Lodi	4
Los Banos	9
Los Gatos	3
Manteca	20
Martinez	12
Merced	8
Biddletown	9
Modesto	14
Monterey	6
Mountain View	15
Napa	1
Newman	10
Oakdale	7
Palo Alto	23
Patterson	5
Pittsburg	6
Placerville	10
Port Chicago	2
Redding	4
Redwood City	8
Rio Vista	11
Roseville	5
Sacramento	15
Salinas	4
San Andreas	6
San Jose	100
Santa Cruz	21
Santa Rosa	2
St. Helena	6
[fols. 184-185] Sebastopol	6
Soledad	2
Sonoma	1
Sonora	4
Stockton	30
Sunnyvale	10
Tracy	5
Truckee	1
Turlock	10
Ukiah	3

Destination	No. of Cars
Upper Lake	2
Vallejo	30
Walnut Creek	10
Walnut Grove	10
Watsonville	6
Willits	1
Willows	1
Winters	5
Woodland	1
Total	675

[fol. 186] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF VAN PEABODY—Filed October 8, 1937

STATE OF CALIFORNIA,
County of San Francisco, ss:

Van Peabody, being first duly sworn, deposes and says: That he is a resident of the City and County of San Francisco, State of California; that he is now and has been continuously since 1931, employed by the James F. Waters Company of San Francisco, California, distributor of De Soto and Plymouth automobiles; that he is now and has been continuously for the entire period of six (6) years wholesale manager for the above named Company; that during the six (6) years last passed he has continuously and at all times been in charge of the distribution of De Soto and Plymouth automobiles which the said James F. Waters Company has supplied to its sub-dealers in Northern California.

Affiant further states that the said James F. Waters Company as distributor during all times mentioned herein, has supplied enfranchised dealers selling De Soto and Plymouth automobiles in certain counties of Northern California; that the principal place of business of said distributor is in the City and County of San Francisco; that all of the [fol. 187] vehicles which the said James F. Waters Com-

pany has delivered to subdealers aforesaid were either delivered by operating said cars on their own wheels and under their own power on the public highways of the State of California; by placing the same on trucks which transported said vehicles to the said dealers or by regular rail shipment to such sub-dealers as aforesaid; that said vehicles which were operated on their own wheels were all driven either by the sub-dealer taking delivery or by a full time employee of affiant or of the consignee dealer; that such deliveries by operating said vehicles on their own wheels were never made by grouping more than three (3) such vehicles in a fleet; and that at no time mentioned herein was any such delivery effected by means of towing any such new vehicle; that there is not now and has never been any fleet movement of new cars intrastate in California from the James F. Waters Company to its enfranchised sub-dealers.

Affiant further states that to the best of his knowledge and belief, there is not now and has never been any fleet movement of new automobiles transported from a distributor to his sub-dealers in Northern California points other than San Francisco, as practically all wholesale distributors of such automobiles maintain their warehouses and principal places of business in the said City and County of San Francisco.

Affiant further states that in the majority of deliveries effected as hereinbefore stated, the consignee, dealer or his full time employee calls at said distributor's warehouse in the City and County of San Francisco and there takes physical delivery of said De Soto or Plymouth automobile or automobiles, and that usually such deliveries comprise only one car.

Affiant further states that deliveries as outlined herein [fol. 188] before, are in most cases effected within a radius of seventy-five (75) to one hundred (100) miles from the City and County of San Francisco, California.

Affiant further states that such deliveries effected singly in most cases and rarely more than two (2) or three (3) in number, driven singly by licensed drivers who are full time employees and thoroughly acquainted with the traffic laws of the Cities and Counties of California, through which such vehicles move, do not constitute any undue or

unusual traffic hazards on the highways of the State of California.

Further deponent sayeth not.

Van Peabody.

Subscribed and sworn to before me this 7th day of October, 1937. Martha H. Sanders, Notary Public in and for the City and County of San Francisco, California. My Commission expires August 31, 1939. (Seal.)

[fol. 189] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF ROY B. ALEXANDER—Filed October 8, 1937

Roy B. Alexander, being first duly sworn, deposes and says: That he is a resident of the City and County of San Francisco, State of California; that he is now and has been continuously since 1933, employed by the James W. McAlister Company of San Francisco, California, distributor of Chrysler and Plymouth automobiles; that he is now and has been continuously for the past four (4) years familiar with and an executive of the wholesale department of the above named Company; that for the four (4) years last passed he has continuously and at all times familiar with the wholesale distribution of Chrysler and Plymouth automobiles which the said James W. McAlister Company has supplied to its sub-dealers in Northern California.

Affiant further states that the said James W. McAlister Company as distributor during all times mentioned herein, has supplied enfranchised dealers selling Chrysler and Plymouth automobiles in certain counties of Northern Cali-
[fol. 190] fornia; that the principal place of business of said distributor is in the City and County of San Francisco; that all of the vehicles which the said James W. McAlister Company has delivered to sub-dealers aforesaid were either delivered by operating said cars on their own wheels and under their own power on the public highways of the State of California; by placing the same on trucks which transported said vehicles to the said dealers or by regular rail shipment to such sub-dealers as aforesaid; that said vehicles which were operated on their own wheels were all driven

either by the sub-dealer taking delivery or by a full time employee of affiant or of the consignee dealer; that such deliveries by operating said vehicles on their own wheels were never made by grouping more than three (3) such vehicles in a fleet; and that at no time mentioned herein was any such delivery effected by means of towing any such new vehicle; that there is not now and has never been any fleet movement of new cars intrastate in California from the James W. McAlister Company to its enfranchised sub-dealers.

Affiant further states that to the best of his knowledge and belief, there is not now and has never been any fleet movement of new automobiles transported from a distributor to his sub-dealers in Northern California points other than San Francisco, as practically all wholesale distributors of such automobiles maintain their warehouses and principal places of business in the said City and County of San Francisco.

Affiant further states that in the majority of deliveries effected as herein before stated, the consignee, dealer or his full time employee calls at said distributor's warehouse in the City and County of San Francisco and there takes physical delivery of said Chrysler or Plymouth automobile [fol. 191] or automobiles, and that usually such deliveries comprise only one car.

Affiant further states that deliveries as outlined herein before, are in most cases effected within a radius of seventy-five (75) to one hundred (100) miles from the City and County of San Francisco, California.

Affiant further states that such deliveries effected singly in most cases and rarely more than two (2) or three (3) in number, driven singly by licensed drivers who are full time employees and thoroughly acquainted with the traffic laws of the Cities and Counties of California, through which such vehicles move, do not constitute any undue or unusual traffic hazards on the highways of the State of California.

Further deponent sayeth not.

Roy B. Alexander.

Subscribed and sworn to before me this 7th day of October, 1937. Martha H. Sanders, Notary Public in and for the City and County of San Francisco, California. My commission expires August, 31, 1939. (Seal.)

[fol. 192] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF GLEN C. STATER—Filed October 8, 1937

Glen C. Stater, being first duly sworn, deposes and says: That he is a resident of the City and County of San Francisco, State of California; that he is now and has been continuously since 1936 engaged in business in the name of Glen C. Stater, Inc. in San Francisco, California as distributor of Hudson automobiles; that he is now and has been continuously for the past one and one-half (1½) years handling his wholesale distribution of Hudson automobiles personally; that during the one and one-half (1½) years last passed he has continuously and at all times been in charge of the distribution of Hudson automobiles which the Glen C. Stater, Inc. has supplied to its sub-dealers in Northern California.

Affiant further states that the said Glen C. Stater, Inc. as distributor during all times mentioned herein, has supplied enfranchised dealers selling Hudson automobiles in certain counties of Northern California; that the principal place of business of said distributor is in the City and County [fol. 193] of San Francisco; that all of the vehicles which the said Glen C. Stater, Inc. has delivered to sub-dealers aforesaid were either delivered by operating said cars on their own wheels and under their own power on the public highways of the State of California; by placing the same on trucks which transported said vehicles to the said dealers or by regular rail shipment to such sub-dealers as aforesaid; that said vehicles which were operated on their own wheels were all driven either by sub-dealer taking delivery or by a full time employee of affiant or of the consignee dealer; that such deliveries by operating said vehicles on their own wheels were never made by grouping more than three (3) such vehicles in a fleet; and that at no time mentioned herein was any such delivery effected by means of towing any such new vehicle; that there is not now and has never been any fleet movement of new cars intrastate in California from the Glen C. Stater, Inc. to its enfranchised sub-dealers.

Affiant further states that to the best of his knowledge and belief, there is not now and has never been any fleet movement of new automobiles transported from a dis-

tributor to his sub-dealers in Northern California points other than San Francisco, as practically all wholesale distributors of such automobiles maintain their warehouses and principal places of business in the said City and County of San Francisco.

Affiant further states that in the majority of deliveries effected as hereinbefore stated, the consignee, dealer or his full time employee calls at said distributor's warehouse in the City and County of San Francisco and there takes physical delivery of said Hudson or Terraplane automobile [fol. 194] or automobiles, and that usually such deliveries comprise only one car.

Affiant further states that deliveries as outlined hereinbefore, are in most cases effected within a radius of seventy-five (75) to one hundred (100) miles from the City and County of San Francisco, California.

Affiant further states that such deliveries effected singly in most cases and rarely more than two (2) or three (3) in number, driven singly by licensed drivers who are full time employees and thoroughly acquainted with the traffic laws of the Cities and Counties of California, through which such vehicles move, do not constitute any undue or unusual traffic hazards on the highways of the State of California.

Further, deponent sayeth not.

Glen C. Stater, Inc., by Glen C. Stater, Pres.

Subscribed and sworn to before me this 7th day of October, 1937. Martha H. Sanders, Notary Public in and for the City and County of San Francisco, California. My Commission Expires August 31, 1939. (Seal.)

[fol. 195] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF FRED EHLERS—Filed October 8, 1937

Fred Ehlers, being first duly sworn, deposes and says: That he is a resident of the City and County of San Francisco, State of California; that he is now and has been continuously since 1922, employed by the J. E. French Company of San Francisco, California, distributor of Dodge and Plymouth automobiles; that he is now and has been

continuously for the past two (2) years wholesale manager for the above named Company; that during the two (2) years last passed he has continuously and at all times been in charge of the distribution of Dodge and Plymouth automobiles which the said J. E. French Company has supplied to its sub-dealers in Northern California.

Affiant further states that the said J. E. French Company as distributor during all times mentioned herein, has supplied enfranchised dealers selling Dodge and Plymouth automobiles in certain counties of Northern California; that the principal place of business of said distributor is in the City and County of San Francisco; that all of the [fol. 196] vehicles which the said J. E. French Company has delivered to sub-dealers aforesaid were either delivered by operating said cars on their own wheels and under their own power on the public highways of the State of California; by placing the same on trucks which transported said vehicles to the said dealers or by regular rail shipment to such sub-dealers as aforesaid; that said vehicles which were operated on their own wheels were all driven either by the sub-dealer taking delivery or by a full time employee of affiant or of the consignee dealer; that such deliveries by operating said vehicles on their own wheels were never made by grouping more than three (3) such vehicles in a fleet; and that at no time mentioned here in was any such delivery affected by means of towing any such new vehicle; that there is not now and has never been any fleet movement of new cars intrastate in California from the J. E. French Company to its enfranchised sub-dealers.

Affiant further states that to the best of his knowledge and belief, there is not now and has never been any fleet movement of new automobiles transported from a distributor to his sub-dealers in Northern California points other than San Francisco, as practically all wholesale distributors of such automobiles maintain their warehouses and principal places of business in the said City and County of San Francisco.

Affiant further states that in the majority of deliveries effected as herein before stated, the consignee, dealer or his full time employee calls at said distributor's warehouse in the City and County of San Francisco and there takes physical delivery of said Dodge or Plymouth automobile [fol. 197] or automobiles, and that usually such deliveries comprise only one car.

Affiant further states that deliveries as outlined herein before, are in most cases effected within a radius of seventy-five (75) to one hundred (100) miles from the City and County of San Francisco, California.

Affiant further states that such deliveries effected singly in most cases and rarely more than two (2) or three (3) in number, driven singly by licensed drivers who are full time employees and thoroughly acquainted with the traffic laws of the Cities and Counties of California, through which such vehicles move, do not constitute any undue or unusual traffic hazards on the highways of the State of California.

Further deponent sayeth not.

Fred Ehlers.

Subscribed and sworn to before me this 7th day of October, 1937. Martha H. Sanders, Notary Public in and for the City and County of San Francisco, California. My Commission Expires August 31, 1939. (Seal.)

[File endorsement omitted.]

[fol. 198] In United States District Court

[Title omitted]

Affidavit of Glenn S. Roberts—Filed October 8, 1937

Glenn S. Roberts, being first duly sworn, deposes and says:

That he is a resident of Los Angeles, California, and is engaged in the general practice of law in the city of Los Angeles, having been duly admitted to practice in this honorable court and has been so engaged in such general practice of law during the past six years; that during the period from October, 1933, to and including January, 1936, this affiant was a member of the Legal Division of the National Recovery Administration, in charge of the legal activities of the National Recovery Administration in Southern California, and during the latter portion acted as Regional Attorney in charge of the legal activities of said Administration for the eleven western states; that during the above mentioned period this affiant was engaged in preparing all

actions prosecuted in the federal courts in Southern California by the National Recovery Administration under the terms of the National Industrial Recovery Act, and in such capacity was active in supervising the actions and activities of state officials and local prosecuting officers in various proceedings under such act.

[fol. 199] That during October, 1933, the individual who was then in charge of the Federal relief camps in the vicinity of Los Angeles complained to this affiant about the large number of individuals who were being referred to such camps who had arrived in Southern California as drivers of caravanned automobiles; that on such complaint the department with which this affiant was then connected made an investigation of the activities of those engaged in such business, and on various occasions throughout the entire period above mentioned this affiant was engaged in the conduct of various proceedings concerning matters arising from the caravanning of automobiles; that from such investigations this affiant learned that it was then a common practice for various dealers in used automobiles and for some of those who were engaged in handling new automobiles, to procure their cars at various points in the Middle West for transportation to Southern California by means of operating such cars under their own power or in tow of other cars over the public highways; that in order to carry on such business it was the common practice to procure individuals in the Middle West who were usually unemployed and without means and who were desirous of getting to Southern California, and who were willing to undertake the task of driving automobiles to California in order to obtain their own transportation.

That under the terms and provisions of the Code of Fair Competition for Motor Vehicle Retailing Trade and the Code of Fair Competition for the Trucking Industry, which codes were then in existence, all persons engaged in such business were obliged to pay not less than a certain minimum wage to employes in various classes of employment, and to require their employes to perform not more than a specified number of hours per week.

That these investigations disclosed the fact that almost [fol. 200] all operators who were engaged in transporting vehicles to Southern California by the caravan method, were violating the provisions of such codes pertaining to

wages and hours of service, and numerous actions were prosecuted, and in many other cases complaints were settled by arbitration and adjustment without the necessity of formal prosecution.

That during the period from October, 1933, until the N. I. R. A. was declared unconstitutional in May of 1935, according to this affiant's best recollection there were approximately 100 different dealers in regard to whom complaints were made concerning violation of such wages and hours provisions, such complaints having been made to the local office of the N. R. A. situated in Los Angeles; that although this affiant has no exact record of the number of individual drivers who made such complaints, according to his best recollection there were in excess of one thousand individuals who made such complaints against the aforesaid caravan operators, charging failure to pay the required minimum wage and to comply with the maximum hour requirement of said codes; that such complaints almost always were received in groups, and that this affiant's investigation showed that the caravan movement carried on was conducted by the operation of caravanned cars in fleets or groups numbering from 10 to as many as 60 cars in a caravan. On many occasions complainants who were personally interviewed by this affiant complained of inadequate food and sustenance while en route to California as drivers of such caravan cars, complained that they were obliged to sleep in open cars and other similar unsuitable places, and were required to drive for excessively long hours, and that from this affiant's own observation, and from the complaints made to this affiant and the above named organization, it was evident that many of them were in improper physical condition; that a very large percentage of such [fol. 201] drivers would arrive in California virtually destitute, and would receive no compensation whatsoever from the caravan operators at the California destination, being obliged and often directed by the caravan operator to immediately report to relief camps or other charitable agencies for sustenance; that on many occasions entire families were transported in such caravans in order to obtain transportation to Los Angeles as their destination.

This affiant's investigation also disclosed that on many occasions such drivers were obliged to continue driving such

vehicles to California after the vehicles had been damaged by wreck or other accident while en route.

Many of such drivers complained that while en route, and particularly in Arizona and other points, they were obliged to hold up the movement of the caravan while destitute caravan drivers begged for food. This was particularly true in several instances where entire families, consisting of husband, wife, and infant children, were forced to hold up the caravan while they begged for money or food to provide for the children.

That from this affiant's investigation of the business of caravanning he knows that during such period, with one or two exceptions which occurred during the latter part of said period, caravan operators employed not more than one or two regular employes per caravan who acted as caravan managers, and that the remainder of the drivers in all caravans were persons whose services were temporarily secured as aforesaid, and that from such investigation it was found that no operator, except for one or two, or other person engaged in caravanning automobiles, maintained a staff of regular employes for the purpose of caravanning, or provided for any return transportation to the east for anyone other than the caravan manager and his assistant.

That this affiant's investigation also disclosed the fact that a great majority of non-residents who came to California as [fol. 202] itinerant caravan drivers, were not equipped with California drivers licenses, and a substantial percentage of them were not equipped with drivers licenses from any other state, and that it was found that on many occasions caravan managers would provide such drivers with evidence of a driver's license, which evidence was fictitious and indicated the issuance of a license to someone other than the caravan driver carrying the same.

Your affiant further ascertained that the services of many of such drivers had been solicited while they were recipients of relief at relief camps situated in mid-western states; that the services of others were solicited through radio and advertisements in which transportation to California was held out as the inducement for the undertaking.

That during the year 1934, as the conditions above described came to the attention of this affiant, and the department with which he was connected, they were called to the attention of various law enforcement and civic organiza-

tions; that during the year 1934 the Regional Director for the National Recovery Administration called a meeting of law enforcement, civil, and charitable organizations in Los Angeles for the purpose of working out cooperatively practical steps to remedy such conditions, and that a similar meeting for the same general purpose was held in San Francisco subsequent thereto.

Further affiant saith not.

Glenn S. Roberts.

Subscribed and sworn to before me this 7th day of October, 1937. Leo E. Sievert, Notary Public in and for Los Angeles County, California. (Seal.)

[File endorsement omitted.]

[fol. 203] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF LEE S. SCOTT—Filed October 8, 1937

[fol. 204] Lee S. Scott makes oath and says that he is the duly appointed and acting Secretary of the Public Service Commission of Nevada, having charge of records and the seal of said Commission; that the Public Service Commission of Nevada is the department delegated by the legislature to make collections of motor convoy fees; that the attached sheets numbered one to six inclusive, labelled "Convoy Collections by Public Service Commission of Nevada" showing make of car, cars, gateway, amount and consignee, is a true and correct list of collections made on "convoyed cars" by the Public Service Commission of Nevada for the months of January to August, inclusive, 1937.

Lee S. Scott

Subscribed and sworn to before me, a Notary Public in and for the County above named this 6th day of October, 1937. Mary Rochon, Notary Public. My Commission expires Apr. 13, 1940. (Seal.)

[fol. 205]

Convoy Collections by Public Service Commission of Nevada

January, 1937

Convoys:

Make	No. of Cars	Gateway	Amount	Consignee
Diam. T	2	U. S. 91	$15.00	Gen. American Precooling, Los Angeles
Plymouth	1	U. S. 91	7.50	V. C. Short, Santa Monica, Calif.
Hudson-Terr	22	U. S. 91	165.00	Walter Boyd, Bakersfield
Graham	1	U. S. 91	7.50	Fred Mishler, Los Angeles
Graham	1	U. S. 91	7.50	Don Churchill, Los Angeles
White	4	U. S. 91	30.00	Santa Monica Mun. Bus, Santa Monica
Willys	1	U. S. 91	7.50	Langlois Motor Co., Toolee, Utah
Plymouth	1	U. S. 91	7.50	Motor Trading Co., Los Angeles
Dodge	1	U. S. 91	7.50	G. W. Fewell, Los Angeles
Mack	3	U. S. 40	22.50	W. C. Ashcroft, San Francisco
Laff. Nash	24	U. S. 40	180.00	W. V. Lord, South Pasadena
Hud.-Terr	13	U. S. 40	97.50	J. P. Fleming
Nash-LaF	22	U. S. 40	165.00	W. V. Lord, S. Pasadena
Olds	1	U. S. 91	7.50	Joe Newell, Los Angeles
LaFayette	20	U. S. 40	150.00	W. V. Lord, S. Pasadena, Calif.
Willys	9	U. S. 91	67.50	Ned Lord, Los Angeles
Sterling	2	U. S. 91	15.00	Cantly Tanzloa, Los Angeles
Ply	2	U. S. 91	15.00	J. Walker, Glendale
Ply	2	U. S. 91	15.00	Motor Transport Co., Los Angeles
Hudson-Terr	13	U. S. 40	97.50	J. W. Fleming, Detroit, Mich.
Ford	1	U. S. 91	7.50	Auto Transport, Los Angeles
Willys	3	U. S. 91	22.50	Ned Lord, Los Angeles
		February, 1937		
International	1	U. S. 40	7.50	K. A. T. Springfield, Ohio
International	2	U. S. 40	15.00	International Harvest Co., San Francisco
Internat	2	U. S. 40	15.00	K. A. T., Springfield, Ohio
Willys	6	U. S. 91	45.00	Ned Lord, L. A.
Willys	2	U. S. 91	15.00	Langlois Co., Toole, Utah

[fol. 206]

Willys	5	U. S. 91	37.50	Ned Lord, L. A.
Mack	1	U. S. 91	7.50	Mack Truck Co., L. A.
DeSoto-Chev	2	U. S. 91	15.00	Auto Transport Co., Los Angeles
Willys	19	U. S. 91	142.50	Ned Lord, L. A.
Internat	2	U. S. 40	15.00	George Kotsonos, San Francisco
Internat	2	U. S. 40	15.00	K. A. T., Springfield, Ohio
Internat	2	U. S. 40	15.00	K. A. T.,
Hudson-Terr	13	U. S. 40	97.50	J. P. Fleming, Detroit
Lafayette	22	U. S. 40	165.00	W. V. Lord, S. Pasadena
Internat	4	U. S. 40	30.00	Kanosha Auto Transport, Springfield, Ohio
Ply	1	U. S. 91	7.50	Warren Daverson, L. A.
Willys	2	U. S. 91	15.00	Langlois Co., Salt Lake City
Laffs	22	U. S. 40	165.00	Walter V. Lord, S. Pasadena
DeSoto	2	U. S. 40	15.00	J. P. Fleming, Detroit
Willys	13	U. S. 91	97.50	Ned Lord, L. A.
Olds	1	U. S. 91	7.50	Kelley Kar, L. A.
		March, 1937		
De Soto	15	U. S. 40	112.50	J. P. Fleming, Detroit
"	17	U. S. 40	127.50	" " "
Nash-LaF	28	U. S. 40	210.00	W. V. Lord, S. Pasadena
" "	30	U. S. 40	225.00	" " " "
DeSoto	21	U. S. 40	157.50	J. P. Fleming, Detroit
Nash-LaF	30	U. S. 40	225.00	W. V. Lord, S. Pasadena
" "	24	U. S. 40	180.00	" " " "

March (Continued)

Convoys:

Make	No. of Cars	Gateway	Amount	Consignee
Willys	13	U. S. 91	97.50	Ned Lord, L. A.
Nash-LaF	24	U. S. 40	180.00	W. V. Lord, S. Pasadena
DeSoto	9	U. S. 91	67.50	J. F. Waters L. A.
Sterling	1	U. S. 91	7.50	George A. Saul, L. A.
Willys	12	U. S. 91	90.00	Ned Lord, L. A.
Ford	1	U. S. 40	7.50	Rucks Garage, Winnemucca, Nev.
Plymouth	1	U. S. 91	7.50	H. S. Hall, Omaha, Nebr.
Marmon Harrington	1	U. S. 40	7.50	Wm. L. MacDonald, San Jose
Willys	14	U. S. 91	105.00	Ned Lord, L. A.
Ford	1	U. S. 91	7.50	Pac. Finance Co., Salt Lake City
Chev.-Ford	2	U. S. 91	15.00	Warren Davison, L. A.
Dodge	1	U. S. 91	7.50	....., Salt Lake City
Ply	1	U. S. 91	7.50	Freed Finance Co., Salt Lake City
Hudson	1	U. S. 91	7.50	Freed Finance Co., Salt Lake City
Nash & LaF	30	U. S. 40	225.00	W. V. Lord, S. Pasadena
Packards	6	U. S. 40	45.00	J. L. Dallas, South Bend, Ind.
[fol. 207]				
Nash & LaF	38	U. S. 40	285.00	W. V. Lord, S. Pasadena
" " "	44	U. S. 40	330.00	" " " " "

April 1937

Willys	12	U. S. 40	90.00	Ned A. Lord, L. A.
Willys	3	U. S. 40	22.50	George H. Peason, Boise
Pont	5	U. S. 91	37.50	Geo. J. Hall, L. A.
"	5	U. S. 91	37.50	" " " " "
"	10	U. S. 91	75.00	" " " " "
Mixed	6	U. S. 91	45.00	W. J. Ochsner, L. A.
Buick	2	U. S. 91	15.00	R. F. Forbes, L. A.
Oldsmobile	1	U. S. 40	7.50	Myron Shane, Anaheim
Nash & LaF	23	U. S. 40	172.50	M. V. Lord, S. Pasadena
Packards	17	U. S. 40	127.50	Dallas & Mavis, South Bend, Ind.
Nash-LaF	32	U. S. 40	240.00	W. V. Lord, S. Pasadena
Autocar	2	U. S. 40	15.00	Autocar Sales Co., San Francisco
Olds	1	U. S. 91	7.50	National Motors, L. A.
Ford	1	U. S. 91	7.50	Steve Marriott, L. A.
Mixed	8	U. S. 19	60.00	H. B. Shea—
Chev	3	U. S. 91	22.50	A. Wingate, Oakdale
Silver Dome-Buick	2	U. S. 91	15.00	O. W. Baker, L. A.
Willys	11	U. S. 91	82.50	Ned Lord, L. A.
Willys	5	U. S. 91	37.50	Langlois Motor, Salt Lake City
Willys	2	U. S. 91	15.00	H. C. Charterson
Mixed	6	U. S. 91	45.00	H. B. Shea, L. A.
Nash-LaF	20	U. S. 40	150.00	Dallas & Mavis, South Bend, Ind.
GMC	2	U. S. 40	15.00	B. E. Farnsworth, Salt Lake City
Mixed	23	U. S. 40	172.50	Dallas & Mavis, South Bend, Ind.
Nash-LaF	19	U. S. 40	142.50	Dallas & Mavis, South Bend
Ford	1	U. S. 40	7.50	Warren Motor Co., Elko, Nev.
Nash-LaF	32	U. S. 40	240.00	W. V. Lord, S. Pasadena
Mixed	21	U. S. 40	157.50	T. F. Ormond Co., San Francisco
Mixed	3	U. S. 40	22.50	Warren Motor Co., Elko, Nev.
Nash-LaF	30	U. S. 40	225.00	W. V. Lord, S. Pasadena
Willys	2	U. S. 40	15.00	James F. Waters, San Francisco
DeSoto	1	U. S. 40	7.50	James F. Waters, San Francisco
Ford	1	U. S. 91	7.50	H. Harsch, L. A.

May, 1937

Mixed	5	U. S. 91	37.50	E. Nelson, Long Beach
Ford	2	U. S. 91	15.00	Paul S. Bunch, L. A.
Ply	2	U. S. 91	15.00	Nat. Motor Co., L. A.
DeSoto	1	U. S. 40	7.50	James F. Waters, San Francisco

[fol. 208] May, 1937 (Continued)

Convoys:

Make	No. of Cars	Gateway	Amount	Consignee
Hudson-Terr...	15	U. S. 40	112.50	J. P. Fleming, Detroit
Yellow Cabs....	10	U. S. 40	75.00	" " " "
Hud.....	1	U. S. 40	7.50	Lynn Selfidge, Hillsboro, Ore.
Graham.....	2	U. S. 91	15.00	H. Marlowe, L. A.
Terr.....	1	U. S. 91	7.50	Nat. Motor Co., L. A.
Chev.....	2	U. S. 91	15.00	W. S. Weed, Madison, Wis.
Inter.....	2	U. S. 91	15.00	Kenosha Auto Tran. Co., Springfield, Ohio
Buicks.....	4	U. S. 40	30.00	Anderson & McCollough, Monterey
La Fayette.....	2	U. S. 40	15.00	Meyer Garage, Elko, Nev.
GMC.....	4	U. S. 40	30.00	Fortier Transport Co., Fresno
Diamond T....	1	U. S. 40	7.50	Dallas & Mavis, South Bend, Ind.
Nash-LaF.....	31	U. S. 40	232.50	W. V. Lord, S. Pasadena
Fords.....	2	U. S. 40	15.00	E. B. Banks, San Francisco
Covered Wagon-Ply.....	2	U. S. 91	15.00	David Estep, L. A.
Mixed.....	6	U. S. 91	45.00	Charles Ontiz, Santa Ana
Willys.....	11	U. S. 91	82.50	Ned Lord, L. A.
Olds.....	1	U. S. 91	7.50	H. B. Shea, L. A.
Ford-Chev.....	2	U. S. 91	15.00	Nat. Motor Co., L. A.
Dodge-Ford....	2	U. S. 91	15.00	Armstrong Bakery, L. A.
Mixed.....	9	U. S. 40	67.50	J. J. Hurracutt, Eureka, Calif.
Mixed.....	4	U. S. 40	30.00	Clarence Kay, Sunnyvale, Calif.
Graham.....	9	U. S. 40	67.50	V. E. Byers, Modesto
Dodge.....	1	U. S. 40	7.50	J. F. Waters, San Francisco
Mixed.....	4	U. S. 91	30.00	National Motor Co., L. A.
Mixed.....	5	U. S. 91	37.50	Steve Marriott, L. A.
Mixed.....	4	U. S. 91	30.00	J. C. Wiley, Wilmington, Calif.
Ply.....	3	U. S. 91	22.50	Joe Green, L. A.
Ply. Dodge.....	2	U. S. 91	15.00	H. B. Shea, Kans. City, Kan.
Stude.....	2	U. S. 91	15.00	G. W. Dunham, Long Beach
Mixed.....	4	U. S. 91	30.00	Natl. Motors, L. A.
Buick.....	2	U. S. 40	15.00	Harold DeLassur, San Francisco
Mixed.....	3	U. S. 40	22.50	Jas. Waters, San Francisco
Schult.....	1	U. S. 91	7.50	? Los Angeles
Ply. Pontiac....	1	U. S. 40	15.00	George R. Pierce, Billings, Mont.
Mixed.....	20	U. S. 40	150.00	T. F. Ormond Co., San Francisco
Mixed.....	6	U. S. 40	45.00	Mayes Garage, Elko, Nev.
Terr. Hudson...	13	U. S. 40	97.50	J. P. Fleming, Detroit
Mixed.....	4	U. S. 91	30.00	Nat. Motor Co., L. A.

[fol. 209] June, 1937

Dodge-Ford....	2	U. S. 91	15.00	Nat. Motor Co., L. A.
Mixed.....	3	U. S. 91	22.50	A. Mullen, Bennington, Neb.
2 Ford 2 Ply...	4	U. S. 91	30.00	Remine, Pasadena
Mixed.....	3	U. S. 40	22 50	Sac. Auto Exchange, Sacramento
Dodge.....	1	U. S. 40	7.50	James F. Waters, San Francisco
Buick-Pontiac..	2	U. S. 40	15.00	Sac. Auto Exchange, Sacramento
Sterling.....	4	U. S. 40	30.00	James Daulson, Rebseyville, Calif.
Dodge.....	1	U. S. 40	7.50	James F. Waters, San Francisco
Willys.....	8	U. S. 40	60.00	Ned A. Lord, Pasadena
Mixed.....	6	U. S. 91	45.00	J. Hasenkamp, Beemer, Nebr.
Dodge.....	2	U. S. 40	15.00	James F. Waters, San Francisco
Nash-LaF.....	35	U. S. 40	262.50	W. V. Lord, S. Pasadena
Dodge.....	2	U. S. 40	15.00	James F. Waters, San Francisco
Inter.....	2	U. S. 40	15.00	Knosha Transport Co., Sidney, Neb.
Olds.....	4	U. S. 40	30.00	Silver State Motor Co., Elko, Nev.
Mixed.....	15	U. S. 91	112.50	Nat. Motor Co., L. A.
Mixed.....	7	U. S. 40	52.50	James F. Waters, San Francisco

[fol. 210] June, 1937 (Continued)

Convoys:

Make	No. of Cars	Gateway	Amount	Consignee
LaFayette	10	U. S. 40	75.00	Byers Orum, Inc., Modesto
Ford	11	U. S. 40	82.50	James F. Waters, San Francisco
Mixed	3	U. S. 40	22.50	James Walters, San Francisco
Mixed	11	U. S. 40	82.50	W. M. Jensen, San Francisco
Ford	1	U. S. 40	7.50	James Waters, San Francisco
Dodge-Terr	2	U. S. 40	15.00	Koelzer Tire & Radio Co., Kansas
Sterling	2	U. S. 91	15.00	Tanzola Tantaly, L. A.
Mixed	7	U. S. 91	52.50	National Motor Car Co., L. A.
Dodge-Chev	2	U. S. 91	15.00	H. B. Shea, Kansas City
Dodge	2	U. S. 91	15.00	Pelton Motor Co., L. A.
Mixed	7	U. S. 91	52.50	Oil Wetson, Riverside
Willys	13	U. S. 91	97.50	Ned A. Lord, S. Pasadena
Ford	4	U. S. 40	30.00	James F. Walters, San Francisco
LaFayette	13	U. S. 40	97.50	Virgil McKinney, South Bend
Ford	2	U. S. 40	15.00	James F. Waters, San Francisco
Ford	1	U. S. 40	7.50	James Walters, San Francisco
Dodge	1	U. S. 91	7.50	Charles C. Hart, Santa Ana
Mixed	3	U. S. 91	22.50	.....
Ply 2 Dodge	3	U. S. 91	22.50	Pelton Motor Car Co., L. A.
Ford	1	U. S. 91	7.50	J. F. Waters, San Francisco
Olds	2	U. S. 91	15.00	Lou R. Winston, Los Angeles
Olds	1	U. S. 91	7.50	Nat. Motor Car Co., L. A.
Nashes	18	U. S. 40	135.00	Walter Lord, Pasadena
LaFayette	2	U. S. 40	15.00	Dallas & Mavis, South Bend
Ford	2	U. S. 40	15.00	James F. Waters, San Francisco
Hudson & Terr	12	U. S. 40	90.00	F. M. Dudley, Burlingame
Plymouth	2	U. S. 40	15.00	Don B. Albertson, Palo Alto
Ford	4	U. S. 40	30.00	James F. Waters, San Francisco
Ford	1	U. S. 40	7.50	Robert L. Trowbridge, Detroit
Ford	3	U. S. 40	22.50	James F. Waters, San Francisco
Mixed	5	U. S. 40	37.50	J. F. Waters, San Francisco
Fageol	1	U. S. 40	7.50	Fageol Motors, Oakland
Mixed	4	U. S. 40	30.00	L. F. Johnson, Sacramento
Ford	3	U. S. 40	22.50	James F. Waters, San Francisco
Nash	17	U. S. 40	127.50	Walter Lord, Pasadena
Pontiac	1	U. S. 91	7.50	D. E. Wolfe, Pasadena
Mixed	10	U. S. 40	75.00	James F. Waters, S. Pasadena
Inter	1	U. S. 40	7.50	International Haryester, Salt Lake City
Nash & LaF	31	U. S. 40	232.50	W. V. Lord, S. Pasadena
Studebaker	1	U. S. 40	7.50	Cecil Fields, South Bend, Ind.
Pontiac	1	U. S. 91	7.50	Clarence (Claire) Ball, L. A.
Pontiac	1	U. S. 91	7.50	Carillo Muzango, L. A.
Ford	1	U. S. 40	7.50	J. F. Waters, San Francisco
Ford	1	U. S. 40	7.50	J. F. Waters, San Francisco
			July, 1937	
ACF	1	U. S. 40	7.50	C. H. Harris, Woodland, Phila.
Inter	2	U. S. 91	15.00	Western Consumers Feed Co., Haynes, Calif.
Plymouth	1	U. S. 40	7.50	Ralph Slanch, Fresno
Plymouth	1	U. S. 40	7.50	James F. Walters, San Francisco
[fol. 211]				
Nash-LaF	25	U. S. 40	187.50	Walter Lord, Pasadena
Graham	10	U. S. 40	75.00	Byers-Orum, Inc., Modesto
LaFayette	10	U. S. 40	75.00	Walter Lord, Pasadena
Mixed	4	U. S. 91	30.00	G. Loper, Long Beach
Plymouth	3	U. S. 40	22.50	James F. Walters, San Francisco

July, 1937 (Continued)

Convoys:

Make	No. of Cars	Gateway	Amount	Consignee
Willys	7	U. S. 40	52.50	Ned Lord, Los Angeels
Willys	16	U. S. 40	120.00	Ned Lord, " "
Pontiac	1	U. S. 91	7.50	Alice Varry, Los Angeles
Pontiac	1	U. S. 91	7.50	Pat Muzango, " "
Mixed	8	U. S. 91	60.00	Langlois, Salt Lake City
Plymouth	4	U. S. 40	30.00	J. A. Tioskey, Detroit
Mixed	12	U. S. 40	90.00	James F. Waters, San Francisco
Ford	2	U. S. 40	15.00	Warren Motor Co., Elko
Mixed	8	U. S. 50	60.00	Frank E. Buckett & Co., Fresno
Laff	31	U. S. 40	232.50	W. V. Lord, S. Pasadena
Ply	5	U. S. 40	37.50	James F. Waters, San Francisco(-1)
Ford	I	U. S. 40	7.50	Warren Motor Co., Elko
Chev	1	U. S. 50	7.50	Oscar J. Blumm, Santa Rosa
		August, 1937		
Chev	1	U. S. 40	7.50	James F. Waters, San Francisco
Lafayettes	23	U. S. 40	172.50	Walter Lord, San Francisco
Chev	4	U. S. 40	30.00	James F. Waters, San Francisco
Chev	5	U. S. 40	37.50	Fleming Driveway, San Francisco
Mixed	7	U. S. 40	52.50	James F. Waters, San Francisco
Olds	1	U. S. 91	7.50	Dealers Protective Co., L. A.
Mixed	21	U. S. 91	157.50	National Motor Co., Los Angeles
Mixed	10	U. S. 91	75.00	Schwind & Popplewell, Rock Island, Ill.
Mixed	10	U. S. 91	75.00	H. B. Shea, L. A.
Mixed	10	U. S. 91	75.00	L. H. Thayer, Long Beach

[fol. 212] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF R. W. ADAMS—Filed October 11, 1937

R. W. Adams, being first duly sworn, deposes and says: That he is a resident of the City and County of San Francisco, State of California; that he is now and has been continuously since 1920, employed by Don Lee, Inc. of San Francisco, California, distributor of Cadillac and La Salle automobiles, that he is now and has been continuously for the past seven (7) years General Sales Manager for the above named Corporation; that during the seven (7) years last passed he has continuously and at all times directly supervised the wholesale distribution of Cadillac and La Salle automobiles which the said Don Lee, Inc. has supplied to its sub-dealers in Northern California.

Affiant further states that said Don Lee, Inc., as distributor during all times mentioned herein, has supplied en-

franchised dealers selling Cadillac and La Salle automobiles in certain counties of Northern California; that the principal place of business of said distributor is in the City and County of San Francisco; that all of the vehicles which said [fol. 213] Don Lee, Inc. has delivered to sub-dealers aforesaid were either delivered by operating said cars on their own wheels and under their own power on the public highways of the State of California; by placing the same on trucks which transported said vehicles to the said dealers or by regular rail or boat shipment to such sub-dealers as aforesaid; that said vehicles which were operated on their own wheels were all driven either by a full time employee or licensed representative of affiant or of the consignee dealer; that such deliveries by operating said vehicles on their own wheels were never made by grouping more than three (3) such vehicles in a fleet; and that at no time mentioned herein was any such delivery effected by means of towing any such new vehicle; that there is not now and has never been any fleet movement of new cars intrastate in California from Don Lee, Inc. to any of its enfranchised sub-dealers.

Affiant further states that in the majority of deliveries effected as hereinbefore stated, the consignee, dealer or his full time employee or licensed representative calls at said distributor's warehouse or place of business in the City and County of San Francisco and there takes physical delivery of said Cadillac or La Salle automobile or automobiles, and that usually such deliveries comprise only one car.

Affiant further states that deliveries as outlined hereinbefore, are in most cases effected within a radius of seventy-five (75) to one hundred (100) miles from the City and County of San Francisco, California.

Affiant further states that such deliveries effected singly in most cases and rarely more than two (2) or three (3) in number, driven singly by licensed drivers who are full time [fol. 214] employees and thoroughly acquainted with the traffic laws of the Cities and Counties of California, through which such vehicles move, do not constitute any undue or unusual traffic hazards on the highways of the State of California.

Further, deponent sayeth not.

R. W. Adams.

Subscribed and sworn to before me this 7th day of October, 1937. Harry Cohn, Notary Public in and for the City and County of San Francisco, California. My Commission expires March 29, 1940. (Seal.)

[File endorsement omitted.]

[fol. 215] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF J. M. HUNT—Filed November 12, 1937

J. M. Hunt, being first duly sworn, deposes and says:

That he is a resident of Los Angeles County.

That he is now, and during all times herein mentioned has been Supervisor of Planning and Traffic of the Chrysler Motors of California, which operates an assembly plant for assembling Plymouth passenger cars and trucks, and Dodge trucks, for distribution to authorized dealers of said vehicles in substantially all of California, Oregon, Washington, Nevada and Arizona. That in said capacity he directs the shipment of all new Plymouth automobiles and trucks and all new Dodge trucks from said assembly plant to points within and without the State in said territory. That all authorized dealers of said vehicles within said area receive all such vehicles which they sell for delivery at their place of business, from said assembly plant, or from plants of the Chrysler Corporation located at Detroit, Michigan.

That true and complete records of all deliveries from said plant are kept under the direct supervision of affiant.

That affiant has caused to be made under his personal [fol. 216] supervision a study of said records for the purpose of ascertaining the number of vehicles which are delivered from said plant by being driven therefrom on their own wheels, such deliveries being known as and hereinafter referred to as "drive-aways" or "drive-away deliveries"; that all deliveries from said plant to dealers within the metropolitan area of Los Angeles County are made as "drive-away" deliveries; that outside of said metropolitan area, deliveries from said plant are usually made on trucks,

by rail, by boat, or other method of conveyance other than by being driven on their own wheels; that on some occasions, however, "drive-away" deliveries of trucks, and very rarely of passenger vehicles, are made to points outside said area; that during the period from January 1, 1937, to July 31, 1937, such deliveries outside of said metropolitan area did not exceed two hundred (200) vehicles, which deliveries were usually made in units of one or two vehicles, although on some occasions units of three or four vehicles were delivered; that except on rare occasions all deliveries now made outside of said metropolitan area are made on truck or other method than as "drive-away" deliveries; that "drive-away" deliveries to points outside said area have been discontinued except in emergency instances.

That each vehicle delivered by said "drive-away" method was and is driven by an employee of the single contract carrier who conducts all of the "drive-away" delivery operations of said assembly plant, except that on rare occasions such "drive-away" deliveries were and are made either by the retail purchaser taking delivery at the factory, or by the dealer or distributor or his employee, taking delivery at the factory.

J. M. Hunt.

Subscribed and sworn to before me, this 3rd day of November, 1937. H. Gumul, Notary Public in and for said County and State. (My commission expires Feb. 18, 1941.) (Seal.)

JOP:MH.
11-1-37.

[fol. 217] [File endorsement omitted.]

[fol. 218] In United States District Court

[Title omitted]

Affidavit of Tod Bates—Filed February 15, 1938

Tod Bates, being first duly sworn, upon oath deposes and states that he is a resident and citizen of the State of California and has been such for many years last past; that he

resides at Palo Alto, California, and is General Manager of the Motor Car Dealers Association of San Francisco, with offices at 2000 Van Ness Avenue, San Francisco, California, and has served in that capacity since October, 1936; that during the six years prior to October, 1936, he served as Executive Secretary of the Motor Car Dealers Association of San Diego, California, and that during part of said six years served as Field Secretary for the Motor Car Dealers Association of Southern California; that during all of the time since 1930 he has been directly active in various phases of the automobile business in California, has been in close contact with automobile dealers, has been and is familiar with their practices and problems, and as a part of his business, has studied, among other things, the methods of marketing and distributing motor vehicles [fol. 219] throughout the State of California.

Affiant further states that prior to the year 1932 practically all motor vehicles which were marketed in California were either assembled or manufactured in the State or were shipped into the State either by rail or by water; that beginning in the year 1932 and increasing in volume since that time there was a movement of motor vehicles on their own wheels and under their own power from their place of manufacture in the central portion of the United States to various points in California, which cars were intended for sale and which movement is generally known as caravaning; that since 1932 and up to and including the spring of 1935 there was a steady development and increase in the volume of caravaning of both new and used automobiles into the State of California and that certain evils resulted from the practice which were the result of legislative consideration in 1935, and that such evils (hereinafter more fully discussed) still exist except insofar as they have been affected by the results of certain acts of the California legislature; that for many years last past not only in the State of California, but elsewhere throughout the United States it has been the custom and practice in the automobile business to sell cars at the so-called "Detroit plus" plan, that is to price new automobiles offered for sale at the nationally advertised price for such product, plus the cost of the transportation of such product from Detroit or vicinity to the point at which the sale is made, and that although automobiles so sold and so priced may have been actually assembled at some point other than Detroit or the principal point of

manufacture of such product, the same price policy is pursued in order to compensate for the transportation of parts [fol. 220] and the special expense and cost of assembling and in order to work out uniform practices in the automobile business.

Affiant further states that it has been the policy of some automobile manufacturers to discourage and, in some instances, prohibit the operation of motor vehicles on their own wheels and under their own power prior to the time of sale of such vehicle to the ultimate purchaser at retail, because of the damage to the car which may occur while being so driven, but that such policy has not been pursued by all manufacturers and as a result dealers in some makes of new cars have found it profitable to accept delivery of such new cars at the principal factory or place of manufacture in the middle west, to cause them to be transported to California on their own wheels and under their own power and to be offered for sale at destination usually at discounted delivered prices. In some instances cars so transported to California are represented as "caravaned" cars and in other instances such cars are sold as new vehicles without mention of the manner in which the vehicles were transported to the place of sale.

That there is carried on throughout the United States an extensive business in the purchase and sale of used cars, that is, automobiles that have been previously registered and operated for varying lengths of time; that used cars are extensively accepted as trade-ins as part compensation for the purchase price of new automobiles and that such practice is common throughout the United States; that by reason of the differential in the retail delivered prices of new automobiles by reason of the varying transportation costs between Detroit and various points at which such vehicles are sold there exists a geographical differential in the price [fol. 221] level of used automobiles throughout the United States usually in about the same proportion as the differential in new car prices, and as a result a used automobile of a given make or model may be bought and sold at Detroit, Michigan, at a substantially lower price than the same automobile might be bought or sold at San Francisco, California. Under the circumstances, this results in a substantial number of persons being engaged in the business of purchasing used cars in wholesale quantities at various points throughout the middle west and causing such ve-

hicles to be driven to California at nominal cost, due to various devices, in order to enhance the value of such vehicles and to take advantage of the higher level of used car prices which prevails at west coast points, and that when such cars are so purchased in the middle west, caravaned to California and sold to purchasers in this state, those engaged in such business are actually engaged in selling both the cars in question, plus their transportation services in moving such vehicles from the middle west to such west coast points; that not only such price differentials but other factors have contributed to the development of caravaning to California.

Further, this affiant knows of his own personal knowledge that both new and used cars driven to California for purpose of sale are customarily transported in fleets or groups; that in order to promote economy in gasoline, oil and other expenses, those engaged in such operation frequently and customarily use an attachment known as a "tow bar" and that by the use of such tow bar one car is coupled to another and pulled throughout the distance by the operation of the towing car only, thus saving the expense of gasoline and oil and the services of a driver for the towed car; [fol. 222] that this affiant knows of his own personal knowledge that it is a common practice among those engaged in caravaning new and used automobiles to place such caravan movements in charge of a caravan foreman or other single employee experienced in the business, familiar with the routes to be traversed and the problems and practices of the trade; that caravaners customarily seek to employ the temporary services of individuals in the middle west who are desirous of obtaining economical transportation to California and who are willing to perform services as drivers of such vehicles in order to secure such inexpensive transportation, or for such transportation plus very nominal compensation. As a result the caravan foreman or manager usually requires that such fleets of vehicles be driven over the highway in comparatively close proximity to each other so that one hookup or unit may follow the lead of its predecessor in the fleet so that such caravan manager may be present and available in the event of car trouble, accident or other difficulty, in order to guide and direct such drivers as to the route to be traveled, customary points for refueling, meals, lodging and other incidentals. As a result, these caravans or fleets of cars are usually and customarily

driven over the highways in such fleets or groups and the usual tendency is for the drivers of cars in such fleets to keep close to the car in front of him so as to keep the fleet intact as a unit. That aside from the presence of a caravan or fleet manager, the drivers of such vehicles are usually nonresidents of the state, are those who do not own the vehicles which they are driving, are unfamiliar with the highways traveled in the course of such transportation, are frequently inexperienced as motor vehicle drivers and particularly in [fol. 223] the driving of one vehicle which is engaged in towing another, are unfamiliar with the traffic practices, rules and regulations which prevail in the State of California, and on arriving in California are often in subnormal physical condition due to the length of the trip, the circumstances under which the trip has been consummated, long hours of driving, inadequate and improper food and rest and other conditions which have a bearing on their alertness; that cars utilized in the towing of other cars in such hook-ups are those with braking systems originally built and designed to control only the single towing car and were not designed to control both the towing car and the vehicle being towed; that the presence of a towed vehicle often impairs the vision of the rear view mirror in the towing car; that under some conditions of traffic the weight of the towed car coupled to the towing car has a tendency to cause swaying and skidding; that the attempt to maintain close order in fleet operations has a tendency to encourage unevenness in speeds of such vehicles while traveling over the highways, and that in the event of car trouble or the necessity for stopping of any one vehicle in the caravan or fleet it is necessary for all vehicles in such fleet to stop and park along the roadside, thus frequently contributing to congestion on such highways; that the great majority of vehicles being driven into the State of California for purpose of sale are operated in fleets or groups. That said fleets range in size from three or four cars to as many as sixty or seventy-five cars.

On some occasions drive-away deliveries are made from plants in the San Francisco area destined to points in Oregon or in Nevada, or elsewhere, but that in such instances, largely due to the same influences which prevail in long haul operations from the middle west, such vehicles are moved [fol. 224] in fleets and in hook-ups;

Affiant further states that there is no such fleet movement of vehicles wholly between points within Zones 1 or 2, re-

spectively, as said zones are defined in Chapter 688 of the California Statutes of 1937; that new car assembly plants and distributors in California, customarily deliver new cars to dealers, for sale, by either the "drive-away" method or the "truck-away" method; that the latter method is customarily employed for deliveries outside of the metropolitan areas of San Francisco-Oakland, and Los Angeles, respectively; that practically all of the "drive-away" deliveries of new cars in California are confined to the San Francisco-Oakland metropolitan area in the Northern part of the State and the metropolitan area of Los Angeles County in the Southern part of the State, such deliveries usually being within districts of 30 miles from the assembly plant. Within said areas there are sufficient highways so that there is no congestion or additional hazard caused by such deliveries; the cars so "driven-away" for delivery are always operated singly, not in hook-ups, and never in groups of more than four cars; the cars so delivered are driven by regular employees of the person furnishing the carrier service by which such deliveries are made, or by regular employees of the dealer taking delivery, or by the individual purchaser taking delivery; that such persons are therefore familiar with California traffic laws and practices, are engaged in a transportation movement which is completed in an elapsed time which usually does not exceed one hour, are in good physical condition, are thoroughly familiar with the highways and traffic conditions which prevail on the roads which they tra-
[fol. 225] verse, and have an interest in their permanent employment and/or in the car which they are driving.

That this affiant further knows of his own personal knowledge that on only exceedingly rare occasions is an automobile moved over the highways for the purpose of sale which originated at some point within zone two and is destined to San Francisco and its metropolitan area or which originated in some smaller city in zone two and is destined to another smaller city, and that this affiant further knows of his own personal knowledge that rarely, if ever, are automobiles driven over the highways of California intended for purpose of sale, which originate in zone one at a point other than Los Angeles and its metropolitan area destined to Los Angeles and such metropolitan area or which originate in some smaller city or community in zone one outside Los Angeles and its metropolitan area, destined to some other smaller city or community; that due to the natural geographical

limitations of the State of California and due to general trade practices, that area included in zone one is that which is the natural trade territory of Los Angeles and its metropolitan area and that part of the State of California situated in zone two is the so-called natural trade territory of San Francisco and environs; that at certain seasons in the year and under certain circumstances there is a movement of used cars originating at Los Angeles and destined for San Francisco and vicinity; that there are only two main traveled, practicable highways between the two principal cities in California, and that at points located approximately at the line between zone one and zone two the two highways in question are virtually bottlenecks, that is they are narrow, two lane roads and are frequently subjected to conges- [fol. 226] tion, and that such congestion as exists would be augmented and aggravated by the encouragement of a greater volume of through traffic between the two cities above mentioned, and particularly of the fleet or caravan movement of cars; that when such caravaning is conducted, originating at Los Angeles and destined to San Francisco, the movement usually consists of used automobiles and is usually consummated by the operation of hook-ups in fleets or caravans in substantially the same manner as the interstate movement heretofore described.

That there is no fleet movement of used cars unless the value of such cars at the point of destination exceeds the value at the point of origin by at least the cost of transporting said vehicles between said points; that normally there is no such difference in value between various points within the State of California; that at certain times during each year, however, there is such difference between Los Angeles and San Francisco resulting in the fleet movement of cars between said points; that the only fleet movement of used cars, intrastate, in California, is from Los Angeles to San Francisco; that there is always such difference in price between points outside of California and points within this state which difference is caused by the differential between the price of new cars in other states and in the State of California; that this constant differential results in large fleet movements of both new and used cars from other states to California for purposes of sale; that to affiant's knowledge there is no fleet movement of cars to or within the State of California other than for purposes of sale.

Tod Bates.

Subscribed and sworn to before me this 2nd day of February, 1938. Martha H. Sanders, Notary Public in and for said County and State. My commission expires August 31, 1939. (Seal.)

[File endorsement omitted.]

[fol. 227] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF E. RAYMOND CATO—Filed May 4, 1938

E. Raymond Cato, being first duly sworn, deposes and says: from the 8th day of January, 1931, to the 6th day of June, 1931, I was Superintendent of the California Highway Patrol, and I am and ever since the 6th day of June, 1931, have been Chief of the California Highway Patrol. My duties in this capacity are to administer the affairs of the California Highway Patrol, lay plans and direct the enforcement of the motor vehicle laws of the State of California, as provided by the Motor Vehicles Laws of the State of California, as provided by the Motor Vehicle Code and other laws regulating the operation of motor vehicles upon the highways of the State.

In the years 1931 and 1932, particularly, caravaning of motor vehicles into the State of California was first called to my attention by complaints from citizens. Committees of citizens called on me in Sacramento and insisted that we stop caravaning. They complained that the caravans were a hazard on the highways. Wrecks caused by such [fol. 228] caravans were reported, and we had numerous complaints from motorists being crowded off the highways. They asked me to stop this traffic, but we could find no law then existing under which we could stop such movement, so we made an investigation to see just what the problem was in order that legislation could be recommended to meet the problem.

By this investigation and by my subsequent observations, and by reason of my duties as Chief of the California Highway Patrol, I have become familiar with caravaning as it exists and has existed upon the public highways in the State of California.

My investigation disclosed that there were many fleets of automobiles being driven and towed into the State for the purpose of sale. These fleets or caravans ranged from 3 or 4 to 60 or 70 cars. Some of the persons caravaning cars brought them into this State for resale by themselves, either at wholesale or retail; others engaged exclusively in transporting cars into this state, in caravans, for others.

The caravans which I observed ran train-like. In other words, they would remain close together, traveling in a group or fleet. Often, by remaining close to each other, the cars in such fleets would not permit traffic going in the same direction to pass a single car in the fleet, and thus interrupt the continuity of the fleet. This would cause an additional traffic hazard when vehicles attempted to pass the entire fleet, resulting, in many instances, in head-on collisions, side-swiping, and upsets.

On the open highways said fleets would not usually drive at the maximum speed allowed, (45 miles per hour) as resident drivers do, but would drive at a slightly slower speed. [fol. 229] In general, the larger the caravan the slower the speed would be at which they traveled. This would make it necessary for more cars to pass such fleets than would have occasion to pass the ordinary traffic.

Many of the cars in said fleets were in units of two coupled together by tow bars or other means, each unit thus coupled being in charge of a single driver, who operated the forward car, thus controlling the movement of both cars by use of the mechanism and brakes of the towing car.

My investigation disclosed that the drivers of cars being brought into the State of California for the purpose of sale were not regularly employed in such occupation. Many of said drivers were under 18 years of age. They were usually casually engaged at the point where the transportation commenced and served without pay or with small remuneration, bearing their own expenses, in order to secure transportation to the point of destination in California. These drivers had little or no interest in the vehicles which they were driving or in their employment other than as a means of transportation. It has been the experience of my Department that these caravan drivers display less regard than other drivers for traffic regulations and for the safety and convenience of others using the highways. By the time said drivers reach California, they are usually in a nearly

exhausted physical condition, and in a hurry to reach their destination in said State. On many instances when such drivers have been involved in accidents, or involved in unusual delays, or have reached a point where they are satisfied to leave the caravan, the driver has abandoned the vehicle which he was driving, on or dangerously near the highway, unattended, to the hazard and inconvenience of [fol. 230] other users of the highways.

Most of the cars caravaned into this state for sale were and are driven over United States Highways 80, 99, 60, 66, 91, 50, 395 and 40, and also on California Highway Route 168.

There have also been occasional caravans over the Parker-Desert Center Highway. It is anticipated that, with the recent completion of the Feather River Highway (California Primary Highway #21) there will be considerable caravaning into Northern California over that route also.

Most of these highways are, for the greater part of their length, two-lane highways, traversing routes which require and have numerous curves (both horizontal and vertical) and grades in the road, and which pass through numerous small towns whose main streets and only through streets are such two-lane highways.

The number of cars transported in fleets into the State of California on their own wheels, or in tow of other vehicles, for the purpose of sale increased greatly from 1931 to 1936. There were approximately 14,000 cars so caravaned into the State of California during each of the years 1935 and 1936. In 1937, particularly in the last few months of that year, following the adoption of the California Caravan Act of 1937, the volume of such traffic materially decreased.

The same conditions have continued to exist and still exist in regard to the nature of the operations and the hazard therefrom, and in regard to the persons operating said vehicles, which I found to exist as heretofore stated, in my investigation in 1931 and 1932, and the foregoing complaints, in regard to the hazards caused by caravaning, [fol. 231] have been continuous since that time.

Prior to the development of the caravan method of transporting cars for sale, there was practically no fleet movement of cars upon the highways in California. There still

is practically no fleet movement of cars on said highways other than in connection with the transportation of cars for the purpose of sale.

Where several cars are being driven in fleets over the highways for long distances, the safest way to handle such traffic, in order to reduce, as much as possible, congestion and hazard from such movement, is to assign traffic officers for the purpose of accompanying and convoying each such fleet to its destination. The need for such convoying is accentuated when such fleets, in the course of their transportation, are required to travel for long distances over two-lane highways, principally used by high speed traffic, and also when such fleets are required to pass through small towns whose main street and only through street is such two-lane highway, and is also accentuated when such fleets are driven by persons who do not own or have any interest in the cars which they are driving, are not permanently employed in such occupation and whose sole interest in their employment or in the car which they are driving is as a means of getting to their destination in California, and is further accentuated when such drivers have been driving said cars for long distances without adequate food or sleep.

If the California Highway Patrol were assured of sufficient funds for this purpose, I would provide officers for the purpose of convoying every caravan of motor vehicles brought into or driven for long distances within this state [fol. 232] for the purpose of sale. Fleets of from 3 to 10 cars could be adequately handled by one or two officers. Fleets in excess of 10 cars, however, would require at least 3 officers to convoy each such fleet so as to avoid undue hazard to other traffic upon the highways.

If officers were assigned 3 to an eight-hour shift on the following highways, it would require a total of 36 officers:

9 Yuma to Los Angeles (280 miles).
9 Blythe to Los Angeles (245 miles).
9 Yermo to Los Angeles (130 miles).
(Nevada line, Highway #91, to Los Angeles—275 miles).
9 Truckee to San Francisco (220 miles).

This number of officers could adequately handle caravaning if confined to these roads and under the supervision of the Patrol.

The intermittent manner in which caravans of vehicles brought into this State for the purpose of sale arrive at the border of said State, and the uncertainty as to the route which they will follow in entering the State, makes, and has made, it practically impossible to provide officers for the purpose of convoying each such caravan to its destination. To the present time, therefore, I have been attempting to avoid the hazards incident to said traffic by providing additional highway patrolmen upon the highways over which such operations are usually or are likely to be conducted.

Where consistent with other duties, these patrolmen will, and are instructed to, observe and assist movements of caravans through the area assigned to them, respectively. [fol. 233] In this regard, it may be mentioned that persons engaged in operating cars in such a caravan probably wouldn't realize the caravan was being escorted, although other traffic would feel the benefit of the officers' assistance in passing the caravan.

In order to understand my statements in regard to the operations of the California Highway Patrol, it is well to know the organization of said Patrol, which is as follows:

Under the Chief and the Assistant Chief of the California Highway Patrol are five Supervising Inspectors of the following bureaus:

Bureau of Correspondence,
Bureau of Field Officers Activities and Equipment,
Bureau of Auto Theft and Investigation,
Bureau of Training School, and
Bureau of Vehicle Lights, Signal Devices, and Commercial Vehicles.

Insofar as the caravaning of motor vehicles upon the highways imposes additional burdens upon officers patrolling the highways, this activity comes under the supervision of the District Inspectors in their respective districts under the supervision of the Chief. The enforcement of the Caravan Act incident to the issuance of permits, the collection of fees and the apprehension of violators, other than while operating upon the highways, and investigation of suspected violators comes under the supervision of the Bureau of Auto Theft and Investigation.

The State of California is also divided into 16 "districts" for the purpose of organizing the operations of field activi-

[fol. 234] ties of the California Highway Patrol. Under the District Inspectors, in turn, are the Captains of the Highway Patrol, who have immediate supervision of the Patrol officers. The Patrol officers are assigned to duties within a particular area or county.

There are established under the supervision of the California Highway Patrol at or near the state line on all major highways entering the State of California what are commonly termed "checking stations". These stations are manned by employees who hold the position of Non-Resident Registration Clerks and are there for the purpose of assisting out-of-state motorists in properly registering their cars, inspecting motor vehicles for issuance of non-resident permits, verification of motors and license numbers, collection of registration fees when due, observing vehicles for the purpose of apprehending stolen vehicles, and assisting other law enforcing agents in the apprehension of stolen vehicles, automobile thieves, and persons wanted for various other crimes, and to render such service to the motorists as is practical.

A member of the Patrol is assigned to duty in the vicinity of these stations, and can be reached on call in case of an emergency when an officer of the law is needed. Clerks thus assigned to the Border Registration offices (checking stations) have no authority as officers under the law except that in each office certain clerks are designated in charge and are sworn in as Deputy Sheriffs in the County wherein the office is located.

[fol. 235] In January or February, 1935, I appointed 3 additional highway patrolmen to Imperial County, 2 to Riverside County, 4 to San Bernardino County, and 1 to a territory in Nevada County east of Truckee. Later that same year, after the Caravan Act of 1935 went into effect, I appointed 2 additional men to Nevada County and 2 to Placer County. These men were assigned to highways over which caravaning most frequently occurred. The assignment of these officers was to the highways where caravaning was most prevalent, basing the assignments upon the density of traffic and accident frequency. On the basis of official reports of patrolmen and personal investigation, I considered that the caravaning of cars was a principal contributing cause to accidents and a major cause in the traffic density in the areas where I assigned these men. This was

the reason why I assigned these additional men to these particular areas.

I testified to the foregoing facts in regard to additional patrolmen added in 1935 at the hearing on November 29, 1935, before the statutory three-judge court in Los Angeles, in the case of Morf vs. Ingels, Eq. No. 759-S in the United States District Court for the Southern District of California, Central Division. At said hearing in the case of Morf vs. Ingels, I estimated that of the aforesaid men who were appointed in 1935 prior to July, 1935, the full time of approximately six of said men could probably be attributed solely to the existence of caravans on the highways. This is what I meant in my testimony in said case that from the first of the year 1935 to the 6th day of July, 1935, I put on approximately six additional men over the whole state because there were caravans. As I also stated at said time, [fol. 236] and as I have stated herein, the actual number of additional patrolmen assigned to highways on which caravaning was prevalent, far exceeded that number. However, it is an almost impossible task to say what portion of the increase in highway patrolmen which was made necessary, was due to caravaning. In other words, all of said officers so assigned undoubtedly devoted a portion of their time to the regulation of traffic other than caravans, but it was necessary to have all of these additional men available on said highways because of the caravan traffic thereon. In fact, if additional funds had been available for that purpose, I would have assigned to said highways and to other highways upon which caravaning occurs, many more patrolmen, as the cars driven in fleets as aforesaid need more supervision by reason of the manner in which they are operated and by reason of the character of the drivers thereof, than is necessary for the same volume of ordinary traffic. These additional patrolmen were retained throughout 1935 and 1936 and are still so employed.

Furthermore, as I also testified at the aforesaid hearing in the case of Morf vs. Ingels, in addition to employing the aforesaid officers, I anticipated employing additional men. Since that hearing, and as funds have been made available, this anticipation has been realized.

In December, 1936, I assigned another additional officer to Imperial County, 2 additional officers to Riverside County and 2 additional officers to Sacramento County.

In September, 1937, I assigned an additional officer to Yolo County, 2 additional officers to Contra Costa County, 1 additional officer to San Joaquin County, 3 additional officers to Los Angeles County, 2 additional officers to Placer [fol. 237] County, 2 additional officers to San Bernardino County, 1 additional officer to Alameda County, 1 additional officer to Riverside County, and 1 additional officer to Imperial County.

These are the assignments which were to highways where caravaning was most prevalent, and where there was the greatest increase in traffic. Again, it cannot be said what portion of their time is devoted to caravan traffic. It is true, however, that as normal traffic increases, the hazards and traffic problems caused by caravaning increase in even greater degree. In other words, the problems caused by caravaning are accentuated when such operations are conducted over densely traveled two-lane highways, and the number of additional patrolmen that are necessary is likewise accentuated and increased when caravaning is also conducted on said highways. The moneys which are being, and which it is anticipated will be derived under the provisions of the Caravan Act of 1937 are being and will be used and are necessary for the purpose of providing these additional patrolmen. If the income under said act becomes insufficient or if said act is held unconstitutional, it will be necessary to find funds from other sources to maintain these officers in the Patrol so long as caravaning operations continue.

In 1935, in addition to the patrolmen assigned to caravan duty, I found it necessary in order to coordinate the work of caravan law enforcement to assign two superior officers to supervise this work; a Captain was detailed in charge of the operations of the caravan enforcement activities and the border checking stations in Zone 2, and a District Inspector was assigned in charge of the supervision of the work in Zone 1.

[fol. 238] Previous to these assignments, the District Inspector was acting as a relief District Inspector throughout the State, and the Captain was working on investigation of theft and as relief Captain in the northern part of the State. This Captain and Inspector, during March, 1938, were reassigned other duties, and the supervision of the Border Checking Stations, through orders of the Director

of Department of Motor Vehicles, was returned to the Division of Registration.

The activities of the California Highway Patrol in caravan enforcement are conducted in cooperation with the Division of Registration of the Department of Motor Vehicles, the Division of Registration receiving all funds collected through the efforts of the Patrol and issuing the permits required by law, and keeping such records as are necessary.

In addition to the additional men required for patrolling the highways by reason of the caravaning operations into this State, it is and has been necessary to devote considerable time and expense to the collection of the fees provided for by the Caravan Acts. Continually since 1935, when the first Caravan Act went into effect, many persons caravaning vehicles into this State for the purpose of sale have attempted by various means to avoid the payment of said fees. Often, instead of following the usual routes entering the State, on which routes border patrol stations were maintained by the California Highway Patrol, caravans of cars have been driven into the State over routes which, although more circuitous, avoid said stations. It has therefore been necessary to place patrolmen on these highways. These men devote a part of their time to the regulation and supervision of any caravan traffic which may seek to enter the State by such route, part of their time to the enforcement of the provisions of the Caravan Act, requiring the [fol. 239] obtaining of permits, and the remainder of their time to general traffic enforcement. It is impossible to state what portion of their time is spent in each of these respective duties. However, were it not for the caravans which are sometimes driven over such routes, and for the fact that many more caravans would be driven over said routes if a patrolman were not maintained thereon, it would not be necessary to maintain such patrolmen on said routes.

In order to enforce the collection of the fees provided for by the Caravan Acts which were adopted in 1935 and 1937, it also has been necessary to employ additional men at the border stations on the principal highways entering the State of California. These men, in addition to providing a check upon the cars actually caravaned into this State, are instructed to and do advise the drivers of said cars, particularly in regard to the highways over which they propose

to drive, in regard to the hazards thereon in connection with such fleet movement, and are instructed to and do inspect said cars to see that they have the safety devices required by the laws of the State of California.

The number of additional men assigned to the respective Border Stations since 1935, is as follows:

Yuma	2
Yermo	2
Blythe	2
Daggett	2
Truckee	1

Also, except at the stations at Blythe and Yuma, which are at the border rather than some distance therefrom, said [fol. 240] stations issue permits and collect fees under said Caravan Acts.

These additional men would not be required except for the purpose of performing the above mentioned duties in assisting in the collection of the fees and in the regulation of caravaning upon the highways so as to reduce, as much as possible, the hazards therefrom. The attention so required by such cars entering the State of California is much greater and involves a greater unit cost than is incident to the routine issuance of a temporary non-resident permit to ordinary non-resident traffic or the issuance of the regular resident registration certificates.

We now have three patrolmen assigned to investigate registrations suspected of caravaning into the State of California for the purpose of sale. These men are necessary for this purpose.

Also, within the California Highway Patrol, while we have not employed any additional clerical help at the principal offices of the Motor Vehicle Department because of the caravaning of cars into the State, there have been two additional clerks assigned to that particular duty, that is, to the clerical work of enforcing said Caravan Act.

In 1931 there were 2,107,275 vehicles registered in the State of California. In 1937 there were 2,638,150 vehicles so registered. In 1931 there were 324,726 foreign vehicles, including trucks, which passed through the border checking stations. Reports show this is slightly less than 50% of actual traffic passing through said stations, the total traffic, including foreign and resident vehicles, being 649,452. In

1937 there were 504,943 foreign vehicles, including 28,485 [fol. 241] commercial vehicles, which passed through the border checking stations. Records show that this is only 50% of actual vehicles checked, the total foreign and resident vehicles passing through said stations in said year being 1,015,886.

E. Raymond Cato.

Subscribed and sworn to before me, this 29 day of April, 1938. Helen B. Higgins, Notary Public in and for said County and State. (Seal.)

[File endorsement omitted.]

[fol. 242] STIPULATION APPROVING STATEMENT OF THE EVIDENCE

It is stipulated by the parties, by their respective counsel, that the foregoing statement of the evidence contains a true and correct statement of all of the oral testimony received in evidence at the trial of the above entitled cause reduced to condensed and narrative form save as a proper understanding of the questions presented has required that parts of it be set forth otherwise; that said oral testimony, the affidavits included in said statement of the evidence, and the stipulations set forth in said statement of the evidence, constitute all of the evidence received at the trial of said cause; and that the foregoing statement of the evidence with this stipulation attached may be approved by the court or any one of the judges composing the court, and upon such approval shall be filed in the clerk's office and shall be a part of the transcript of record on appeal, all without further notice to any of the parties or their counsel and without the necessity of said court being reconvened, and at any time and place the court or any one of said judges may elect.

Dated this 3rd day of December, 1938.

Everett W. Mattoon, Attorneys for Plaintiff and Appellees. U. S. Webb, Attorney General of California, by L. G. Campbell, Deputy Attorney General of California, Attorneys for Defendants and Appellants.

ORDER APPROVING STATEMENT OF THE EVIDENCE

The foregoing statement of the evidence, with the stipulation of the parties thereto attached, having been presented to the undersigned and having been examined and found to be true, complete and properly prepared, and to contain a correct statement of the oral testimony received reduced to condensed and narrative form save as a proper understanding of the questions presented has required that parts [fol. 243] of it be set forth otherwise, said statement of the evidence is approved and is ordered to be filed in the clerk's office and made a part of the record on appeal in this cause to the Supreme Court of the United States.

Done and ordered this 12th day of December, 1938.

Curtis D. Wilbur, United States Circuit Judge. Geo. Cosgrave, United States District Judge. Leon R. Yankwich, United States District Judge.

[File endorsement omitted.]

[fol. 244] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL TO SUPREME COURT OF THE UNITED STATES—Filed October 19, 1938

To the Honorable Curtis D. Wilbur, Judge of the Circuit Court of Appeals for the Ninth Circuit; the Honorable George Cosgrave, United States District Judge for the Southern District of California; the Honorable Leon R. Yankwich, Judge of the District Court of the United States for the Southern District of California:

Your petitioners, the above named Defendants and Appellants, Ray Ingels, as Director of the Department of Motor Vehicles of the State of California; Howard E. Deems, as Registrar of the Department of Motor Vehicles of the State of California, and Lon W. Butler, as Manager of the Los Angeles Office of the Department of Motor Vehicles of the State of California, respectfully show:

On the 19th day of October, 1938, the Court made and entered its final decree in this cause permanently enjoining [fol. 245] your petitioners from enforcing against the Plain-

tiffs and Appellees the provisions of Chapter 788, California Statutes of 1937, known as the "Caravan Act".

The said final decree is greatly to the prejudice and injury of your petitioners and is erroneous and inequitable. The errors upon which your petitioners claim to be entitled to an appeal are more fully set out in the Assignment of Errors and Prayer for Reversal, filed in the office of the Clerk of this Court, and presented herewith, pursuant to Rule 9 of the Rules of the Supreme Court of the United States.

There has likewise been filed in the Clerk's office, and there is presented herewith, a statement as to the jurisdiction of the Supreme Court of the United States on appeal as provided by Rule 12 of the Rules of the Supreme Court of the United States.

Wherefore, in order that your petitioners may obtain relief in the premises and have opportunity to show the errors complained of, your petitioners pray for the allowance of an appeal in this cause from the said final decree to the Supreme Court of the United States, agreeably to the Statutes and Rules of the Supreme Court of the United States in such cases made and provided.

Your petitioners further pray for citation as provided by law and Rule 10 of the Rules of the Supreme Court of the United States, directed to the Plaintiffs and Appellees.

U. S. Webb, Attorney General of the State of California, by Frank W. Richards, Deputy Attorney General, Attorneys for Defendants and Appellants.

[File endorsement omitted.]

[fol. 246] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed October 19, 1938

The Defendants and Appellants, by their attorneys, do on this 19th day of October, 1938, at the time of filing their petition for appeal to the Supreme Court of the United States from the final decree in this cause entered on the 19th day of October, 1938, by the District Court of three judges, file and present to the Court their following Assignment

of Errors upon which they will rely in said appeal, and, for such Assignment of Errors say the Court erred in entering said decree permanently enjoining the Defendants and Ap- [fol. 247] pellants from enforcing against the Plaintiffs and Appellees the provision of Chapter 788 of the Statutes of 1937 of the State of California, and erred in making and entering its findings of fact and conclusions of law, in the following respects:

1

The Court erred in holding said Chapter 788 to be in violation of the Commerce Clause of Section 8 of Article I of the Constitution of the United States, because said Chapter 788 does not discriminate against nor impose an unconstitutional burden upon interstate commerce, nor otherwise conflict with the Commerce Clause.

2

The Court erred in holding said Chapter 788 to be in violation of the "equal protection of the laws" clause of Section I of the Fourteenth Amendment to the Constitution of the United States, because said Chapter 788 does not unconstitutionally discriminate against Plaintiffs or any other persons nor deny the Plaintiffs or any other persons equal protection of the laws.

3

The Court erred in holding said Chapter 788 to be in violation of the "due process of law" clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, because said Chapter 788 does not impose unreasonable requirements upon Plaintiffs and does not deprive Plaintiffs of property without due process of law.

4

The Court erred because on the entire record the Plaintiffs and Appellees have failed to sustain the burden of overcoming the presumption of the correctness of the judgment of the legislature of California that a valid need of legislation existed, and that the class defined in said Chapter 788 includes the entire class properly the subject of such legislation, and have failed to overcome the presumption that said Chapter 788 is reasonable and non-discriminatory.

[fol. 248] 5

The Court erred in making that part of its findings of fact No. 6 which relates to the number of vehicles brought into California each year for the purpose of sale and the number of vehicles not in convoy, the number in convoy and the number in two's, first, because there is no evidence to support such finding, second, because the evidence affirmatively shows that said finding is erroneous, third, because said finding is wholly immaterial in view of the undisputed evidence showing the manner in which Plaintiffs bring their vehicles into the State of California for purpose of sale.

6

The Court erred in making finding of fact No. 7, for the reason that there is no evidence in the record to support such finding of fact and for the further reason that the evidence in the record shows that said finding of fact is erroneous. There is no evidence to establish that there are approximately 4,000 cars transported monthly entirely within Zone No. 1 for purpose of sale upon the highways, and there is no evidence to show that said cars are often moved in convoy, the evidence showing the contrary; and there is no evidence to show that many of said cars are transported through congested districts and for considerable distances.

7

The Court erred in making finding of fact No. 8, for the reason that there is no evidence in the record adequate to support said finding.

8

The Court erred in making finding of fact No. 9, because the evidence shows that cars brought into the State for the purpose of sale do create serious traffic problems differing entirely from the traffic problems created by the movement of cars intra-zone.

9

The Court erred in making finding of fact No. 12, because [fol. 249] the evidence shows that the operation of cars in caravans does create special and additional hazards to passing traffic or to other users of the highway, and the evidence shows that said caravaning of cars does create a traffic problem necessitating special policing of said cara-

vans, and the evidence shows that such caravaning of cars does create undue wear and tear on the roads and highways of the state.

10

The Court erred in making the first part of finding of fact No. 13, in that the evidence shows that the statute in question is for the purpose of permissible highway regulation and for the purpose of obtaining permissible compensation for the use of the highways of the state.

11

The Court erred in making the second, third, fourth and fifth parts of finding of fact No. 13, because the Plaintiffs and Appellees have failed to sustain the burden of showing that the license fee is excessive and bears no relation to the expense of the Motor Vehicle Department in policing the highways of the state; but the evidence in fact shows the contrary.

12

The Court erred in making the sixth part of finding of fact No. 13, in that the evidence fails to show that said Chapter 788 creates an unreasonable and arbitrary classification because it applies only to persons using the highways for the transportation of motor vehicles for the purpose of sale and does not apply to other persons using said highways under comparable circumstances. The evidence shows that the persons to whom the Act applies constitutes specialized form of highway traffic substantially distinct from other traffic, which creates substantial traffic and police problems differing from those of other traffic.

[fol. 250]

13

The Court erred in making the seventh part of finding of fact No. 13, in that the evidence fails to show that the fees charged under said Chapter 788 are disproportionate to other taxes, fees or licenses charged by the State of California for the registration of vehicles within the state or for vehicles using the highways in the State; and the evidence shows the contrary.

14

The Court erred in making the eighth part of finding of fact No. 13, in that the evidence fails to show that the license

fees provided in said Chapter 788 are exorbitant, arbitrary or unfair, or that the interstate business in which the Plaintiffs are engaged will suffer irreparable damage.

Wherefore, the Defendants and Appellants pray that the said decree be reversed and that the District Court be directed to dissolve the permanent injunction therein ordered and to dismiss Plaintiffs' bill of complaint, and that Defendants and Appellants recover their costs herein and that they be granted such other relief as may be appropriate and equitable.

U. S. Webb, Attorney General of the State of California, by Frank W. Richards, Deputy Attorney General, Attorneys for Defendants and Appellants.

[File endorsement omitted.]

[fol. 251] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL TO SUPREME COURT OF THE UNITED STATES—Filed October 21, 1938

The petition of Ray Ingels, as Director of the Department of Motor Vehicles of the State of California; Howard E. Deems, as Registrar of the Department of Motor Vehicles of the State of California; and Lon W. Butler, as Manager of the Los Angeles office of the Department of Motor Vehicles of the State of California, the Defendants and Appellants in the above entitled cause, for an appeal in said cause to the Supreme Court of the United States from the judgment of the District Court of the United States for the Southern District of California, Central Division, having been filed herein, accompanied by an Assignment of Errors as provided in Rule 9 of the Rules of the Supreme Court [fol. 252] of the United States, and the Statement as to Jurisdiction of the Supreme Court of the United States as provided by Rule 12 of said Rules, and the said papers having been filed and having been presented to this court and the record in this cause having been considered;

It is hereby ordered, that an appeal be, and it is hereby, allowed to the Supreme Court of the United States from the

final decree of the District Court of the United States for the Southern District of California, Central Division, entered in this cause on the 19th day of October, 1938, and that the Clerk of said Court shall, within sixty days from this date, make and transmit to the Supreme Court of the United States, under his hand and seal of the Court, a true copy of the material part of the record herein, which shall be designated by praecipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is further ordered, that citation issue to the Plaintiffs and Appellees as provided by law and the Rules of the Supreme Court.

It is further ordered, that Defendants and Appellants file security for costs in the penal sum of $100.00.

It is further ordered, that until this appeal is finally determined plaintiffs shall pay the sum of $15.00 to the Department of Motor Vehicles of the State of California at its office in the city of Los Angeles for each automobile brought into the State of California by them or any of them for the purpose of sale or resale, which sum shall be so paid at the time the automobile arrives at destination or, in any event, within three days after such automobile enters the State of California. All sums which are so paid shall be retained by the said Department of Motor Vehicles in a special fund pending the final determination in this proceeding, on appeal or otherwise, of the constitutionality of the aforementioned statute, at which time, in the event the said statute shall be determined to be unconstitutional, the sums [fols. 253-297] so paid shall be returned, upon application, to the respective plaintiffs, and in the event the said statute shall be determined to be constitutional the said sums shall be retained by the said Department of Motor Vehicles in lieu of all fees, charges and penalties imposed upon the said plaintiffs for said automobiles by the aforesaid statute, and shall be applied according to the provisions thereof.

Done and entered this 21st day of October 1938.

Curtis D. Wilbur, United States Circuit Judge. Geo. Cosgrave, United States District Judge. Leon R. Yankwich, United States District Judge.

Approved as to form October 19, 1938. Tripp, Penney & Callaway, by George Penney.

[File endorsement omitted.]

[fol. 298] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUBSTITUTION OF ATTORNEYS—Filed November 15, 1938

We, the above-named plaintiffs, by Paul Gray, Inc., do hereby substitute Everett W. Mattoon as our attorney in the above-entitled cause in the place and stead of Tripp, Penney & Callaway.

Dated November 9, 1938.

Paul Gray, Inc., by Paul Gray, Pres.

We hereby consent to the above substitution.

Tripp, Penney & Callaway, by George Penney.

I hereby accept the above substitution.

Everett W. Mattoon.

[File endorsement omitted.]

[fol. 299] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed December 12, 1938

To the Clerk of the District Court of the United States for the Southern District of California, Central Division:

For the purpose of the record on appeal in the above entitled cause, please prepare, certify and transmit to the clerk of the Supreme Court of the United States a transcript of the following from the files and records of your Court in said cause:

1. Plaintiffs' bill of complaint as amended by authorized interlineation.

[fol. 300] 2. Defendants' motion to dismiss.

3. Court's order dated September 13, 1937, authorizing amendments to plaintiffs' bill of complaint and authorizing defendants to withdraw their motion to dismiss.

4. Proposed amendments to plaintiffs' bill of complaint.

5. Court's order dated September 29, 1937, allowing proposed amendments to plaintiffs' bill of complaint.

6. Answer of defendants.

7. Statement of the evidence, with stipulation of parties approving same, and order and certificate of the court approving such statement.

8. Substitution of Everett W. Mattoon as attorney for plaintiffs and appellees.

9. Findings of fact and conclusions of law on plaintiffs' application for temporary injunction, filed November 20, 1937.

[fol. 301] 10. Interlocutory injunction dated November 20, 1937.

11. Stipulation for submission of evidence on final hearing, dated April 22, 1938, filed May 4, 1938.

12. Plaintiffs' motion to strike parts of affidavit of E. Raymond Cato, filed May 4, 1938.

13. Ruling of Court on plaintiffs' motion to strike, dated May 4, 1938.

14. Court's findings of fact and conclusions of law on final hearing, dated October 18, 1938.

15. Final decree for permanent injunction.

16. Opinion of the Court, and dissenting opinion of Judge Yankwich (These are a part of the statement of jurisdiction).

17. Petition for appeal to Supreme Court of the United States.

18. Assignment of errors and prayer for reversal.

19. Statement of jurisdiction of the Supreme Court of the United States.

20. Order allowing appeal to the Supreme Court of the United States.

21. Notice and proof of service upon plaintiffs and appellees of copies of the petition for appeal, assignment of errors, statement of jurisdiction, and order allowing appeal.

22. Citation with acceptance of service.

23. Cost bond on appeal.

24. This praecipe.

Dated this 12th day of December, 1938.

U. S. Webb, Attorney General of California, by L. G. Campbell, Deputy Attorney General, Attorneys for Defendants and Appellants.

[fols. 302-303] Service of the foregoing praecipe for transcript of the record on appeal and receipt of copy thereof

acknowledged. It is stipulated and agreed that such praecipe includes all of the record necessary to be included in the transcript on appeal to the Supreme Court of the United States, and that said praecipe may be filed as the praecipe for transcript of record on appeal agreed upon by stipulation of the parties hereto.

Dated this 12th day of December, 1938.

Everett W. Mattoon, Attorney for Plaintiffs and Appellees.

[File endorsement omitted.]

[fol. 304] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 305] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF THE POINTS INTENDED TO BE RELIED UPON BY APPELLANTS, AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed December 20, 1938

The appellants above named, in compliance with Par. 9 of Rule 13 of the Rules of the Supreme Court, do now make and file their statement of the points on which they intend to rely and of the parts of the record necessary for the consideration thereof.

I

The points to be relied upon by appellants are the assignments of error filed in this cause by appellants in the office of the Clerk of the District Court of the United States for the Southern District of California, Central Division, and which are included in the transcript of record on appeal [fol. 306] in this cause filed or to be filed in the office of the Clerk of the Supreme Court of the United States.

II

The parts of the record necessary for the consideration of said points and which should be printed are:

1. Plaintiffs' bill of complaint as amended by authorized interlineation.

2. Defendants' motion to dismiss.

3. Court's order dated September 13, 1937, authorizing amendments to plaintiffs' bill of complaint and authorizing defendants to withdraw their motions to dismiss.

4. Proposed amendments to plaintiffs' bill of complaint.

5. Court's order dated September 29, 1937, allowing proposed amendments to plaintiffs' bill of complaint.

6. Answer of defendants.

7. Statement of evidence, with stipulation of parties approving same, and order and certificate of the court approving such statement.

8. Substitution of Everett W. Mattoon as attorney for plaintiffs and appellees.

9. Interlocutory injunction dated November 20, 1937.

10. Stipulation for submission of evidence on final hearing, dated April 22, 1938, filed May 4, 1938.

11. Plaintiffs' motion to strike parts of affidavit of E. Raymond Cato, filed May 4, 1938.

12. Ruling of Court dated May 4, 1938, overruling plaintiffs' motion to strike parts of affidavit of E. Raymond Cato.

13. Court's findings of fact and conclusions of law on final hearing, dated October 18, 1938.

14. Final decree for permanent injunction.

15. Opinion of the Court, and dissenting opinion of Judge Yankwich. (Please print as part of printed record.)

[fol. 307] 16. Petition for appeal to Supreme Court of the United States.

17. Assignment of errors and prayer for reversal.

18. Statement of jurisdiction of the Supreme Court of the United States (as required by Rule 12).

19. Order allowing appeal to the Supreme Court of the United States.

20. Praecipe for transcript of record.

21. The foregoing statement of points to be relied upon and designation of parts of the record to be printed.

Dated this 12th day of December, 1938.

U. S. Webb, Attorney General of California, by Frank W. Richards, Deputy Attorney General of California, Counsel for Appellants.

Service of the foregoing Statement of the Points to be Relied Upon, and Designation of the Parts of the Record

to be Printed, and receipt of copy thereof, acknowledged this 12th day of December, 1938.

Everett W. Mattoon, Counsel for Appellees.

[fol. 308] [File endorsement omitted.]

Endorsed on cover: File No. 43,019. S. California, D. C. U. S. Term No. 534. Ray Ingels, as Director of the Department of Motor Vehicles of the State of California, et al., appellants, vs. Paul Gray, Inc., Al Asher, and Hirsch Mercantile Company, et al. Filed December 20, 1938. Term No. 534, O.T., 1938.

FILE COPY

FILED
DEC 20 1938
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 534

RAY INGELS, AS DIRECTOR OF THE DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA, ET AL.,
Appellants,

vs.

PAUL GRAY, INC., AL ASHER AND HIRSCH MERCANTILE COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

STATEMENT AS TO JURISDICTION.

U. S. WEBB,
Attorney General of California.
FRANK W. RICHARDS,
Deputy Attorney General of California.

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	2
Statutory provisions sustaining jurisdiction	2
State statute the validity of which is involved	2
Date of the decree and application for appeal	2
Nature of the case and rulings below	3
Exhibit "A"—Opinion of the District Court of the United States for the Southern District of California	11

Table of Cases Cited.

Clark v. *Poor*, 274 U. S. 554	3
Ingels v. *Morf*, 300 U. S. 290	9
Morf v. *Bingaman*, 298 U. S. 407	3
Sproles v. *Binford*, 286 U. S. 374	3

Statutes Cited.

Constitution of the United States, Article I, Section 8	3
Constitution of the United States, 14th Amendment, Section 1	3, 9
Judicial Code, Section 238(3) (28 U. S. C. 345, par. 3)	2
Statutes of 1937 of the State of California, Chapter 788, page 2253	2
Judicial Code, Section 266 (28 U. S. C. 380)	2, 3, 4

DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

No. Eq. 1203-C

PAUL GRAY, INC., A CALIFORNIA CORPORATION; AL ASHER, HIRSCH MERCANTILE COMPANY, A CALIFORNIA CORPORATION; MELVIN E. SNYDER, AN INDIVIDUAL DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF UNITED AUTO SALES; KELLEY KAR COMPANY, A CALIFORNIA CORPORATION; L. H. THAYER, NATIONAL MOTOR CAR COMPANY, A CALIFORNIA CORPORATION; SAMUEL A. KLEIN, AN INDIVIDUAL DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF KLEIN AUTO COMPANY; BILL SANELLA, C. O. MACE, RAY CULBERTSON AND JACK PARMILEE, A COPARTNERSHIP DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF CULBERTSON & PARMILEE MOTOR SALES; E. F. PORTER, DON CARDIFF AND F. A. RODGERS, A COPARTNERSHIP DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF CARDIFF & RODGERS, AND MOTOR TRADING COMPANY, A CALIFORNIA CORPORATION,

Plaintiffs and Appellees,

vs.

RAY INGELS, AS DIRECTOR OF THE DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA; HOWARD E. DEEMS, AS REGISTRAR OF THE DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA, AND LON W. BUTLER, AS MANAGER OF THE LOS ANGELES OFFICE OF THE DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA,

Defendants and Appellants.

STATEMENT OF JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

The defendants and appellants, by their attorneys, do on this 19th day of October, 1938, at the time of filing and presenting their petition for appeal to the Supreme Court of the United States from the final decree entered in this cause by the District Court of the United States for the Southern District of California, Central Division, on the 19th day of October, 1938, file and present to said District Court this statement that the basis of the jurisdiction of the Supreme Court of the United States to review said final decree upon appeal is the following:

(a) The statutory provisions believed to sustain the jurisdiction of the Supreme Court of the United States are Paragraph 3 of Section 238, and Section 266, Judicial Code, as amended (U. S. C., Title 28, Sections 345, Paragraph 3, and 380).

(b) The validity of Chapter 788, Page 2253, Statutes of 1937 of the State of California, is involved in this cause. It is set out verbatim on pages 3-8 of this statement.

(c) The final decree of the District Court of the United States for the Southern District of California, Central Division, sought to be reviewed, was entered on the 19th day of October, 1938, and the petition for this appeal was presented to said District Court on the 21st day of October, 1938, and the Order of the District Court allowing this appeal was entered on the 21st day of October, 1938.

Said final decree was entered by a specially constituted District Court of three judges (one judge dissenting), and enjoined defendants (appellants), officers of the State of California, from enforcing said Chapter 788, Statutes of

1937 of the State of California, on the ground that said statute violates the Constitution of the United States.

Cases which sustain the jurisdiction of the Supreme Court are *Sproles* v. *Binford,* 286 U. S. 374; *Morf* v. *Bingaman,* 298 U. S. 407; and *Clark* v. *Poor,* 274 U. S. 554.

Plaintiffs (appellees), by their bill of complaint in equity filed in the District Court, alleged that Chapter 788, Statutes of 1937 of California, unconstitutionally violates their rights protected by the Commerce Clause of Section 8 of Article 1 of the Constitution of the United States, and by the equal protection of the laws and due process of law clauses of Section 1 of the Fourteenth Amendment to the Constitution.

Said bill of complaint prayed that interlocutory injunction and permanent injunction issue to restrain defendants (appellants) from enforcing said statutes against plaintiffs (appellees). On the 8th day of October, 1937, hearing was had before the District Court of three judges upon plaintiffs' (appellees') application for interlocutory injunction; and on the 20th day of November, 1937, the Court ordered that interlocutory injunction issue as prayed.

On the 4th day of May, 1938, the cause came before the said District Court of three judges for final hearing and was submitted, and on the 19th day of October, 1938, the Court made and entered its final decree permanently enjoining defendants (appellants) as prayed.

Said Chapter 788, Statutes of 1937 of California, is as follows:

> "CARAVANING" of motor vehicles.
>
> An act to regulate the caravaning of vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of vehicles in caravan for the privilege of using the public highways and for the cost of regulating persons engaged in caravaning and providing such fees shall be a lien and for

the enforcement of such liens and the collection and disposition of such fees and imposing penalties for violation thereof, and to repeal an act entitled "An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term 'caravaning' and providing for the licensing of motor vehicles in caravan and imposing penalties for violation thereof," approved July 6, 1935, declaring the urgency thereof, and providing that it shall take effect immediately.

(Chapter 788, Statutes of 1937, in Effect July 2, 1937.)

SECTION 1. The term "caravaning" as used in this act shall mean the transportation of any vehicle of a type subject to registration under the Vehicle Code, operated on its own wheels, or in tow of a motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, purchaser or prospective purchaser, whether such agent, dealer, purchaser or prospective purchaser may be located within or without this State.

SECTION 2. The term "dealer" when used in this act shall mean and include every individual, partnership, corporation or trust whose business in whole or in part is that of caravaning new or used vehicles as herein defined, or of selling or exchanging new or used vehicles, and shall include every agent or representative of every such person engaged in such business, except that nothing herein contained shall be construed to require the performance of any act or the payment of any fee by any agent or representative which has previously been performed or paid by his principal.

SECTION 3. No person, firm or corporation, shall use any highway in this State for caravaning vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California upon application at its office in Sacramento or any of its regularly established branch offices other than stations at the State boundary line a special permit as

to each vehicle so caravaned, for use of the highways of this State in caravaning such vehicles, which permit shall be displayed by posting the same upon the windshield of such vehicle or in other prominent place thereon where it may be readily legible.

SEC. 4. As a condition precedent to the use of the highways of this State for the purpose of caravaning and the issuance of any special permit provided for in the previous section of this act, the Motor Vehicle Department of the State of California shall charge and collect, for each vehicle for which a caravan permit may be issued whether such vehicle be operated under its own power or in tow of a motor vehicle, a fee of seven and fifty one-hundredths dollars as compensation for the privilege of using the public highways of this State and a fee of seven and fifty one-hundredths dollars to reimburse the State for expense incurred in administering police regulations pertaining to the operation of vehicles moved pursuant to such permits and to public safety upon the highways as affected by such operation.

SEC. 5. Permits issued pursuant to the provisions of this act shall be valid for a period of six months after date of issuance and shall be valid only in the hands of the original permittee but shall not authorize the operation of any vehicle other than that for which originally issued. Such permits shall contain such information and be in such form and shall be issued under such rules and regulations as may be prescribed by said Motor Vehicle Department.

SEC. 6. The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this State by such vehicle during the period that such vehicle may be operated for the purpose of sale or exchange under and solely in accordance with such permit upon the public highways of this State; provided, however, that nothing in this section shall exempt the owner or operator of such vehicle from compliance, except with respect to fees or license charges, with all laws

of this State now or hereafter adopted, relating to safety in the use of the public highways.

SEC. 7. All fees from the issuance of permits provided for under this act shall be collected by the Motor Vehicle Department. One-half of such fees shall be paid into and become a part of the motor vehicle fund in the State treasury, and are hereby appropriated out of said fund for the support of the Department of Motor Vehicles; provided however, that should a motor vehicle support fund be created in the State treasury said one-half of such fees shall be paid into and become a part of said motor vehicle support fund. The remainder of such fees shall be paid into and become a part of the State highway fund in the State treasury. The money so derived by the State are intended as compensation for the privilege of using the highways of this State and to reimburse the State treasury for the added expense which the State may incur in the collection of such fees and in the administration and enforcement of this act and the expense of policing the highways over which such caravaning may be conducted.

SEC. 8. The provisions of this act shall not apply to the transportation of motor vehicles between points within Zone 1 or between points within Zone 2, which zones are hereby defined as follows:

Zone 1—That part of the State of California lying within the counties of San Diego, Imperial, Orange, Riverside, San Bernardino, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Kern and Inyo;

Zone 2—That part of the State of California not included within Zone 1 as herein defined.

SEC. 9. Every dealer in vehicles shall report to and list with the Motor Vehicle Department on forms to be prescribed by such department and in accordance with rules in regard thereto promulgated by such department, each vehicle received, held or offered by him for sale which has been caravaned over the public high-

ways of this State. Such report and listing shall be made forthwith upon the receipt of such vehicle. Such report, among other things, shall show the number of the caravan permit authorizing the operation of the vehicle covered in such report. In the event no permit has been secured for such operation payment of the required fees and penalty shall be made to the department and shall accompany such report. In the event permit fees required by this act are not paid when due a penalty of fifty percent of such fees for each such vehicle shall be assessed and collected by the department.

SEC. 10. On demand of the Motor Vehicle Department, any dealer in vehicles shall furnish to the department evidence as to the origin of any vehicle not previously registered in this State which is held or offered by him for sale, and evidence of the manner in which such vehicle was transported to the place in which it is or has been held or offered for sale. It shall be *prima facia* evidence that a vehicle not previously registered in this State is or has been transported for purpose of sale if it is exchanged, sold, or offered for sale within thirty days after it has been operated over the public highways of this State.

SEC. 11. The permit fees provided for herein shall be due and payable in advance of the operation upon the public highways of any vehicle for which such permit is required and shall be a lien against the vehicle for which they are due during the time such vehicle is held for sale or offered for sale or resale.

SEC. 12. The Department shall collect the permit fees and enforce the liens provided for herein by seizure of the vehicle or vehicles upon which such fees are a lien from the person or persons in possession thereof, if any, and by sale of such vehicle. The seizure and sale herein authorized may be made at any time after such fees become due and shall be conducted and carried out by the department in the same manner as is provided by law for the seizure and sale of personal

property by the assessor for the collection of taxes due on personal property.

SEC. 13. Violation of any of the provisions of this act is a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

SEC. 14. If any section, paragraph, clause or phrase of this act should be held to be unconstitutional by any court of competent jurisdiction such holding shall not affect any other part of this act and it is hereby declared to be the intention of the Legislature that no section, paragraph, sentence, clause or phrase of this act has been an inducement to the enactment of any other part hereof.

SEC. 15. An act entitled "An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term 'caravaning' and providing for the licensing of motor vehicles in caravan and imposing penalties for the violation thereof," approved July 6, 1935, is hereby repealed.

SEC. 16. This act is hereby declared to be an urgency measure within the meaning of section 1 of Article IV of the Constitution, necessary for the immediate preservation of the public peace, health and safety and as such shall take effect immediately.

The following is a statement of facts constituting such necessity:

Experience has shown that, due to climatic conditions, the caravaning of vehicles occurs almost exclusively during the spring and summer months. It is necessary, therefore, in order to regulate caravan vehicles, the number of which is now increasing, that this act shall take effect immediately.

The basis of plaintiffs' (appellees') complaint is that they purchase passenger automobiles in States east of Califor-

nia, drive them on their own wheels from there to their places of business in Los Angeles, California, for the purpose of selling them, and there sell them; and that said Chapter 788 unconstitutionally burdens the interstate commerce conducted by plaintiffs (appellees) by discriminating against them and depriving them of their property without due process of law, in violation of the Commerce Clause and the equal protection of the laws and due process of law clauses of the Fourteenth Amendment.

Defendants' (appellants') position is that the class defined and included in said Chapter 788 is a distinct class carrying on business on the State highways for commercial gain in a substantially different way than any person not included within the class; that the Act does not discriminate against the class therein defined because there are no persons not included within the class who conduct operations by motor vehicles similar to the operations of the included class, either in intrastate or interstate commerce; that the Act only requires the payment of a police power license fee and a charge for use of the State highways and such fees are reasonable in amount.

The questions presented differ from the questions decided by this Court with respect to the previous Caravan statute of California in *Ingels* v. *Morf*, 300 U. S. 290. In enacting the present Caravan statute involved in this action, the legislature of California remedied the defects pointed out by this Court in *Ingels* v. *Morf, supra,* as existing in the previous statute. The present Act specifically declares that the fee is exacted for regulation of the traffic and as compensation for the use of the highways and the fee is divided between those two purposes. The present statute also differs from the former Act in that by reason of the zoning provision of the Act, intrastate commerce is subject to the provisions of the Act when such intrastate

commerce is of a mileage and type equal or similar to the interstate commerce subject to the Act.

The questions involved are substantial. The enforcement of a statute deemed by the legislature and the officials of the State to be necessary to the State's welfare is suspended. The fundamental question is the right of the State to regulate and require compensatory fees from persons using the highways for the purpose of private gain, where such use imposes upon the highways an unusually burdensome and dangerous form of traffic.

Attached hereto marked respectively Exhibits A and B are the opinions of the District Court and the opinion of the dissenting judge.

Respectfully submitted,

U. S. WEBB,
Attorney General of the
State of California,
By FRANK W. RICHARDS,
Deputy Attorney General,
Attorneys for Defendants and Appellants.

EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

No. Eq. 1203-C.

PAUL GRAY, INC., a California Corporation, *et al., Plaintiffs,*

vs.

RAY INGELS, as Director of the Department of Motor Vehicles of the State of California, *et al., Defendants.*

Before Wilbur, Circuit Judge, Cosgrave and Yankwich, District Judges.

Opinion by COSGRAVE, *District Judge:*

In 1935 the California Legislature passed an act that defined "caravaning" as the transportation from without the state of any motor vehicle operated on its own wheels or in tow of another vehicle for the purpose of sale to or by anyone within or without the state. The act required a special permit for caravaning for which a fee of fifteen dollars for each vehicle was charged. This money was paid into the general fund in the state treasury, "to reimburse the state for the added expense which the state may incur in the administration and enforcement of this act, and the added expense of policing the highways over which such caravaning may be conducted." 1935 Stat. 1453.

In a suit brought to restrain the enforcement of the act on the ground that it was a forbidden burden on interstate commerce, and an infringement of due process and equal protection enjoyed under the Fourteenth Amendment of the U. S. Constitution, the plaintiffs obtained judgment in a three judge District Court, Morf *v.* Ingels, 14 Fed. Supp. 922, on May 5, 1936. The defendants appealed to the U. S. Supreme Court, where the judgment was affirmed, Ingels *v.* Morf, 300 U. S. 290, on March 1, 1937. In its decision the Supreme Court considered only the contention that the licensing provisions burdened interstate commerce and expressly refrained from considering the question of discrimi-

nation against interstate commerce by failure of the act to exact a fee from those engaged in intrastate commerce, Ingels *v.* Morf, *supra,* 293. Appellants did not deny that the permit fee burdened interstate commerce, but urged that it was permissible for (a) the use of the highways, (b) the cost of policing the traffic, including the cost of administering the act. The court held (294) that to justify the exaction by a state of a money payment burdening interstate commerce it must affirmatively appear that it is demanded as reimbursement for the expense of providing facilities or of enforcing regulations of the commerce, which regulations are within its constitutional power. Since, under the act, all the license fees were paid into the general fund, and since no part of the general fund is applied to highway purposes, the court concluded that the fees were collected, not for the use of the highways, but for the extra expense of administering the act and policing the traffic, and since the trial court found on sufficient evidence that the fee was excessive for such purpose, the decision of the District Court holding the act invalid was upheld.

In 1937 the California Legislature repealed the 1935 act and passed an entirely new act (1937 Stat. 2253), differing in several respects from that of 1935. The license fee is still imposed on vehicles transported on their own wheels for sale. The state is divided into two zones, with the result that each zone contains one of the two principal centers of population, Los Angeles and San Francisco. While a license fee is required in moving cars from one zone to the other, none is required for intrazone movement. A license fee of $7.50 is provided "as compensation for the privilege of using the public highways" of the state, and a like fee "to reimburse the state for expenses incurred in administering police regulations pertaining to the operation of vehicles moved." (Section 4.) One-half of the fees are paid into the Motor Vehicle fund in the state treasury for the support of the Department of Motor Vehicles. In substance, the new act requires a license fee for all vehicles moved on their own wheels for sale from one of the densely populated areas of the state to another and from points outside of the state to points within either of the zones, but does not require a license fee for similar movements between points within each zone. It devotes one-half of the fee to general highway

purposes and the remaining one-half to the expense of policing the traffic and enforcing the act.

Plaintiffs in the present action seek to enjoin the enforcement of the 1937 act on the grounds, among others, that it is an excessive burden on interstate commerce; that it unjustly discriminates between interstate and interzone movement of cars on the one hand, and intrazone movement on the other; that there is no reasonable relation between the charges made and the expenditures necessary.

The defendants plead, among other things, that large numbers of cars are moved in units of two coupled together, with a single driver; that drivers bring cars into the state, and are irresponsible, not regular employees, are transients; that the bringing in of a number of cars in single units produces congestion of the highways, increases traffic hazards and increases the cost of the highway maintenance.

It is shown that approximately 15,000 cars are brought into California upon their own wheels for sale annually. Of this number, 3,000 are brought in singly, that is each car with its driver and not in association with any others—not in convoys. 6,000 are moved singly, each car with a single driver, but in convoys of varying numbers, possibly ten to twenty. 6,000 are moved in twos, the rear car being coupled to the one in front with one driver to each such unit. The interzone moving is negligible. At the two centers of population and distribution, San Francisco in the northerly zone, and Los Angeles in the southerly zone, there is, of course, extensive sale of cars not brought into the state on their own wheels. These are distributed over an average radius of perhaps a hundred miles from each of the centers, rarely coupled together, but nevertheless in convoys and generally each car is in charge of a driver regularly employed. Distribution is also made by loading the cars on trucks that exceed in length the coupled car unit.

A general comparison between the year 1931 and the year 1937 shows:

	1931	1937
Total registrations in California	2,107,275	2,638,150
Cars of outside registry coming into the state	324,726	504,943
Total number driven into the state	649,245	1,015,886

From this it appears that the 15,000 cars brought in for sale on their own wheels are not to exceed 1½% of the total number of cars coming over the border in 1937. The 3,000 cars brought in, each with its own driver and not in association with other cars, necessarily must be eliminated for it cannot be that they present anything in the nature of a problem. The remaining 12,000 cars come in convoys, say averaging 15 cars to a convoy, or 800 different processions of 15 cars each during the 365 days of the year. This is an average of 66 convoys each month over a distance that can be attained without undue haste in one day. Over a considerable portion of the distance, notably from points of entry at Yermo, Blythe, and Yuma, while the road is a two lane highway, it traverses great lengths of totally uninhabited country with no intersecting roads and with nothing in the way of congested traffic.

15,000 cars means 1½% of the total of 1,015,886 cars that cross the state borders. The testimony as to the number of men whose employment caravaning requires is indefinite and inconclusive. No one on behalf of defendants testified that caravans are actually escorted, with the exception of Captain Personius, who, while stating that he himself had gone from Truckee to Sacramento with caravans, did not know how many caravans had been assisted in his district. Mr. Cato, chief of the patrol, does not say that a single officer or employee devotes his entire time to the caravaning problem. At the most only Captain Personius and possibly two district officers do so. On the other hand, one of the plaintiffs testified that at no time was any of his considerable number of caravans ever escorted or assisted by a traffic officer. It was agreed that many other witnesses would give similar testimony.

The officer charged with the enforcement of the act testifies that after the enactment of the law three officers were assigned to Highway 50 between Carson City, Nevada, and Placerville, California, south of Lake Tahoe. At the same time defendants present the records of the Public Service Commission of the State of Nevada, from which it appears that during the entire eight months, beginning with January 1, 1937, and ending with August 31 of the same year, the period of greatest activity, a total of only 9 cars were

brought into California for sale over Highway 50. These undisputed figures put in grave doubt the question as to whether substantial traffic problems exist by reason of caravaning.

The showing made by defendants as to the traffic problems presented by caravaning is not impressive. The number of caravaned cars compared with the total coming into the state, a negligible percentage, seems to force the conclusion that the situation presented is substantially that found by the District Court to exist in the former case. Morf *v.* Ingels, 14 Fed. Supp. 922, that is, that the fee is not fixed on any basis of compensation for the regulation of the traffic.

There is practically no interzone movement. The intrazone movement of cars for sale is approximately 4,000 monthly in Zone 1. While no figures were presented, the movement in Zone 2 may be deemed to be the same. Such cars are entirely untaxed. A tax, purporting to be for the privilege of using the public highways, of $7.50 is exacted with respect to every car brought in for sale on its own wheels, while no tax whatever is levied on those brought in otherwise. Those moved for sale from the point of distribution to points of sale within a zone are untaxed. While some of the features attending the so-called caravaning are absent, nevertheless such cars are often moved in convoys with regularly employed drivers as distinguished from those casually employed. In many cases the cars are loaded on trucks that themselves exceed the length of two connected cars. They are transported through distinctly congested districts, and for considerable distances. Altogether, it is difficult to distinguish between the two systems of transportation.

The creation of the two zones, there being no interzone movement, is highly suggestive of an effort to create a distinction where none in fact exists. The effect of the act is to lay a tax for the privilege of using the highway on 15,000 cars brought in from other states on their own wheels and at the same time relieve at least five times that number from the payment of the tax that use the public highways under substantially similar conditions within the state, but which do not happen to be brought in on their own wheels.

A tax somewhat similar was upheld in Morf *v.* Bingaman, 298 U. S. 407. Such tax was levied, however, upon all automobiles transported for sale, whether intrastate or interstate. While the act attempts by creating zones to remove this objection, that attempt is plainly ineffectual, there being no interzone movement, and the result is that a fee of $7.50 is exacted for the privilege of bringing the car from the state line to the point of distribution. In California, with a registration of 2,638,150 cars, this provision is nothing but discriminatory. In passing on the 1935 act, the Supreme Court expressly declined to pass upon this question (Ingels *v.* Morf, *supra*, 293). A regulation that made a distinction between those who carry farm products for hire and those who carry other commodities has been condemned as an arbitrary distinction by the Supreme Court, Smith *v.* Cahoon, 283 U. S. 553. Since public safety was the ultimate object, the distinction was held to be discriminatory, as not based on anything having relation to the purpose for which it was made (567). The same condition seems to exist here.

The Tennessee statute considered in Interstate Transit, Inc. *v.* Lindsey, 283 U. S. 183, was held invalid because it was evident that the tax was laid for the privilege of doing business and not a compensation for the use of the highways. The tax, laid on interstate busses, was defended as a reasonable compensation for the use of the highways. The Court uses what appears to be quite pertinent language:

> "But since a State may demand of one carrying on an interstate bus business only fair compensation for what it gives, such imposition, although termed a tax, cannot be tested by standards which generally determine the validity of taxes. Being valid only if compensatory, the charge must be necessarily predicated upon the use made, or to be made, of the highways of the State. Clark *v.* Poor, *supra.* In the present act the amount of the tax is not dependent upon such use. It does not rise with an increase in mileage travelled, or even with the number of passengers actually carried on the highways of the State. Nor is it related to the degree of wear and tear incident to the use of motor vehicles of different sizes and weights, except in so far

as this is indirectly affected by carrying capacity. The tax is proportioned solely to the earning capacity of the vehicle. Accordingly, there is here no sufficient relation between the measure employed and the extent or manner of use, to justify holding that the tax was a charge made merely as compensation for the use of the highways by interstate busses." 190.

Even in South Carolina State Highway Department *v.* Barnwell Brothers, Inc., *et al.*, decided on February 14, 1938, the Supreme Court seriously discusses the question whether a state, in regulating the width of trucks used in interstate commerce, may not have laid an undue burden on such commerce. So long as the regulation was not discriminatory it was upheld.

"The nature of the authority of the state over its own highways has often been pointed out by this Court. It may not, under the guise of regulation, discriminate against interstate commerce. But "In the absence of national legislation specially covering the subject of interstate commerce, the state may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use *applicable alike to vehicles moving in interstate commerce, and* those of its own citizens." Morris *v.* Duby, 274 U. S. 135, 143. * * * This court has often sustained the exercise of that power although it has burdened or impeded interstate commerce. It has upheld weight limitations lower than those presently imposed, *applied alike to motor traffic moving interstate and intrastate.* Morris *v.* Duby, *supra;* Sproles *v.* Binford, *supra.*" (Italics supplied.)

Are we not compelled, following Morf *v.* Ingels, to grant the injunction?

On the whole, it is evident that the employment of any considerable number of traffic officers to overcome problems presented by the entry of 12,000 automobiles, 6000 in twos, and the other 6,000 each with its own driver, presents no problem justifying the expenditure of a tax equaling $112,-

500, nor can a charge of $7.50 for the use of the highway be justified with respect to each car transported for sale when it comes from outside of the state, while nothing is charged under similar conditions within the state unless a car happens to be taken from one of the densely populated areas to the other. The situation presented seems to bring this statute within the language of the Supreme Court in passing upon the statute of the State of Washington that imposed a tax upon common -iers, decided at the same time as Morf *v.* Ingels, *supra*

> "A law exhibiting the intent to impose a compensatory fee for such a legitimate purpose (regulation and inspection of public utilities) is *prima facie* reasonable. If the exaction be so unreasonable and disproportionate to the service as to impune the good faith of the law, it cannot stand either under the commerce clause or the Fourteenth Amendment." Great Northern Railway *v.* Washington, 300 U. S. 154 (160).

The permanent injunction is granted.
Dated July 9, 1938.

CURTIS D. WILBUR,
Circuit Judge.
GEO. COSGRAVE,
District Judge.
LEON R. YANKWICH,
District Judge.

YANKWICH, *District Judge:*

I dissent.

The California Caravan Act of 1937, (Cal. Stats. 1937, Ch. 788) having been passed to supplant the Caravan Act of 1935, voided by the courts (Morf *v.* Ingels, 1937, 14 Fed. Sup. 922; Ingels *v.* Morf, 1937, 300 U. S. 290), the challenge to it must be considered in the light of the postulate that the legislative body sought by the new Act to overcome the infirmities of the old Act. (United States *v.* Bekins, 1938, 82 Law Ed. (Adv. Ops.) 751) Both Acts aim to control highway trans-

portation within the state. The power of a state so to do is beyond challenge. Its exercise would be upheld even though it impeded or burdened interstate commerce. The Supreme Court has said so repeatedly. As recently as February 14, 1938, (South Carolina State Highway Department *v.* Barnwell Bros., Inc., 1938, 303 U. S. 177, 189) it said:

> "This court has often sustained the exercise of that power (*state control over highways*) although it has burdened or impeded interstate commerce. It has upheld weight limitations lower than those presently imposed, applied alike to motor traffic moving interstate and intrastate. Morris *v.* Duby, 274 U. S. 135; Sproles *v.* Binford, 286 U. S. 374. Restrictions favoring passenger traffic over the carriage of interstate merchandise by truck has been similarly sustained. Sproles *v.* Binford, 286 U. S. 374; Bradley *v.* Public Utilities Commission of Ohio, 289 U. S. 92, as has the exaction of a reasonable fee for the use of the highways. Hendrick *v.* Maryland, 235 U. S. 610; Kane *v.* New Jersey, 242 U. S. 160; Interstate Busses Corp. *v.* Blodgett, 276 U. S. 245; Morf *v.* Bingaman, 298 U. S. 407; cf. Ingels *v.* Morf, 300 U. S. 290."

What is, however, forbidden, in the exercise of this power, is discrimination against interstate commerce, under the guise of regulation. (Interstate Transit, Inc., *v.* Lindsey, 1931, 283 U. S. 183).

One of the indirect aims of the Act under attack is to control certain automobile traffic which originates outside of the State. I am of the view that this result is achieved without discrimination against interstate commerce.

Instead of imposing (as did the Act of 1935) a fee on caravaning originating without the state, the new Act requires the payment of two license fees for the caravaning of automobiles between two zones within the state, whether the movement originates within or without the State. Each fee is $7.50 in amount. One is imposed "as compensation for the privilege of using the public highways." (Section 4 of the Act.) The money derived from this fee is payable into the State Highway Fund, (Section 7 of the Act) which

is reserved for moneys used for the acquisition of rights-of-way and the construction, maintenance and improvements of state highways. (Cal. Stats. 1935, Ch. 29, secs. 182-183). The other fee is "to reimburse the state for expenses incurred in administering police regulations pertaining to the operation of vehicles moved pursuant to such permits and to public safety upon the highways as affected by such operation." (Section 4 of the Act.) Similar declarations of purpose are contained in Section 7 of the Act.

The permit, issued upon the payment of the fees, is valid for six months and is in lieu of any other registration or license fee or charge during this period in which the caravaned car may be driven over the highways of the state for the purpose of sale or exchange. (Section 6 of the Act.)

The form which regulation of the traffic on state highways may take without impinging upon the commerce clause of the Constitution of the United States has been stated, generally, by Mr. Justice Brandeis in Interstate Transit, Inc., v. Lindsey, 1931, 283 U. S. 183, 185:

> "While a State may not lay a tax on the privilege of engaging in interstate commerce, Sprout *v.* South Bend, 277 U. S. 163, it may impose even upon motor vehicles engaged exclusively in interstate commerce a charge, as compensation for the use of the public highways, which is a fair contribution to the cost of constructing and maintaining them and of regulating the traffic thereon. Kane *v.* New Jersey, 242 U. S. 160, 168-169; Clark *v.* Poor, 274 U. S. 554; Sprout *v.* South Bend, *supra*, pp. 169-170. As such a charge is a direct burden on interstate commerce, the tax cannot be sustained unless it appears affirmatively, in some way, that it is levied only as compensation for use of the highways or to defray the expense of regulating motor traffic. This may be indicated by the nature of the imposition, such as a mileage tax directly proportioned to the use, Interstate Busses Corp. *v.* Blodgett, 276 U. S. 245, or by the express allocation of the proceeds of the tax to highway purposes, as in Clark *v.* Poor, *supra*, or otherwise. Where it is shown that the tax

is so imposed, it will be sustained *unless the taxpayer shows that it bears no reasonable relation to the privilege of using the highways or is discriminatory.* Hendrick *v.* Maryland, 235 U. S. 610, 612; Interstate Busses Corp. *v.* Blodgett, 276 U. S. 245, 252; Compare Inter-State Busses Corp. *v.* Holyoke Street Ry., 273 U. S. 45, 51." (Italics added.)

The following cases indicate the variety of forms of regulations so sustained: Hendrick *v.* Maryland, 1915, 235 U. S. 610 *(graduated license fee and requirement of non-resident to appoint agent);* Packard *v.* Banton, 1924, 264 U. S. 140 *(statute limited to cities of first class, requiring persons engaged in carrying passengers for hire in motor vehicles upon public streets to file security or insurance for payment of judgments for death or injury);* Morris *v.* Duby, 1927, 274 U. S. 135 *(state order limiting maximum weight of motor trucks and loads on highways);* Clark *v.* Poor, 1927, 274 U. S. 554 *(statute requiring extra tax on motor carriers);* Interstate Busses, Inc., *v.* Blodgett, 1928, 276 U. S. 245, *(a state tax of one cent for each mile of highway traversed by a motor bus used in interstate commerce, in addition to other taxes imposed on owner in the absence of "a showing that in actual practice the tax of which it complains falls with disproportionate economic weight on it);* Sproles *v.* Binford, 1932, 286 U. S. 374, *(a statute limiting the net load of trucks);* Stephenson *v.* Binford, 1932, 287 U. S. 251 *(statute regulating carriers on highways and their rates);* Continental Baking Co. *v.* Woodring, 1932, 286 U. S. 352, *(license fee and tax on carrier of goods by motor);* Morf *v.* Bingaman, 1936, 298 U. S. 407, *(a flat tax on caravaning automobiles);* South Carolina State Highway Dept. *v.* Barnwell Bros, Inc., 1938, 303 U. S. 177 *(statute prohibiting the use on the highway of trucks exceeding certain length and weight);* George B. Wallace *v.* Pfost, 1937, 57 Ida. 279, 65 P. (2) 725, and annotations thereto in 110 A. L. R. 622 *(fee on caravaning automobiles).* See also Clyde Mallory Lines *v.* Alabama, 1935, 296 U. S. 261, in which a uniform harbor fee for vessels of certain tonnage was sustained, in the face of the constitutional

inhibition against laying of duties on tonnage by the states. (Constitution of United States, Article I, Sec. 10, Cl. 3.)

The final decision on the prior Act (Ingels *v.* Morf, 1937, 300 U. S. 290) did not turn upon classification. The Act was denied judicial sanction because the fee exacted was found to be excessive. The case also declares that the burden of proving that the fee is excessive rests with him who attacks it. If he does not show that it exceeds a reasonable charge for the privilege of using the highway or for defraying the cost of regulating the traffic involved, his attack must fail. (See, Morf *v.* Bingaman, 1936, 298 U. S. 407.)

In passing upon an attack of this character, courts disregard the fact that all the money collected as a charge may not actually be used, or be necessary for that purpose. (Gundling *v.* Chicago, 1900, 177 U. S. 183; Clark *v.* Poor, 1927, 274 U. S. 554; Interstate Transit, Inc., *v.* Lindsey, 1931, 283 U. S. 183.) Nor is it material that the litigant attacking the bill may not actually ask or receive the service for which a fee is charged. (Clyde Mallory Lines *v.* Alabama, 1935, 296 U. S. 261.)

These principles are expressions of sound judicial polity. Courts, in exercising the power to nullify an exaction as an unreasonable burden upon interstate commerce, should not be placed in a position of requiring a sovereign state to prove, *in dollars and cents,* that the exaction it makes is the exact equivalent of the damage which the particular trip may occasion to the state highway. (Kane *v.* New Jersey, 1916, 242 U. S. 160, 167, 168.)

If the facts in the record are tested by these rules, they fail to show that the exactions of the 1937 Caravan Act are onerous or invalid.

There is no showing in the record that the exaction of a fee of $7.50 for the use of the state highway is excessive. The cases discussed have approved a flat charge, comparing it with the old flat toll charge for the use of bridges.

Certain it is that it is not up to the State of California to show that every one of these automobiles transported

for business purposes does damage in that amount to the highway.

Bear in mind that the imposition, whether in the form of a tax or of a fee, is "not on *the use* of the highways but on *the privilege of using them.*" (Morf *v.* Bingaman, 1936, 298 U. S. 407, 412.) When this is the case, "it is immaterial whether the state places the fees collected in the pocket out of which it pays highway maintenance charges or in some other." (Morf *v.* Bingaman, 1936, 297 U. S. 407, 412.) And the Supreme Court has declined to invalidate an exaction, even when it was actually shown that the fund created by it exceeded what was needed for the particular purpose. (Kane *v.* New Jersey, 1916, 242 U. S. 160; and see, McLean *v.* Denver & Rio Grande R. R. Co,, 1906, 203 U. S. 38, 55.)

Nor does the evidence in the record warrant the conclusion that the fee of $7.50 for added police protection and the maintenance of safety caused by this particular form of traffic is excessive or unreasonable. The problem which caravaning presents, appears from the testimony of E. Raymond Cato, Superintendent of the California Highway Patrol, whose duties are to administer the affairs of the patrol, lay plans and direct the enforcement of the motor vehicle laws of the state and other laws regulating the operation of motor vehicles upon the highways of the state. The problem was called to his attention in 1931 and 1932. Committees of citizens called on him and asked that caravaning stop. They complained that the caravans were a hazard on the highways. Wrecks caused by them were reported. There were numerous complaints from motorists being crowded off the highways. Because there was no law to stop the traffic, an investigation was made to determine what the problem was, in order that legislation might be recommended to meet it. This investigation and Cato's subsequent observations disclosed that there were many automobiles being driven and towed into the state for the purpose of sale. These fleets and caravans ranged from three and four to sixty or seventy cars. Some of the persons caravaning cars brought them into the state for resale by themselves either at wholesale or retail. Others

engaged exclusively in caravaning automobiles for others. The observed caravans ran train-like, *i. e.*, they would remain close together in a group or fleet. Often, by remaining close to each other, the cars in such fleets would not permit traffic going in the same direction to pass a single car in the fleet and thus interrupt the continuity of the fleet. This would cause an additional traffic hazard when vehicles attempted to pass the entire fleet resulting, in many instances, in head-on collisions, side-swiping and upsets. On the open highways, the fleet would not usually drive at the maximum speed allowed—forty-five miles per hour—as resident drivers do, but would drive at a slightly slower speed.

In general, the larger the caravan, the slower the speed would be at which it was driven. This would make it necessary for more cars to pass such fleets than would have occasion to pass the ordinary traffic. Many of the cars in the fleets were in units of two grouped together by tow-bars or other means, each unit being in charge of a single driver who operated the forward car, thus controlling the movement of both cars by use of the mechanism and brakes of the towing car. The drivers of the cars brought into the state for the purpose of sale were not regularly employed in such occupation. Many of them were under eighteen years of age. They were usually engaged casually at the point where the transportation began and served without pay or for a small remuneration, bearing their own expenses in order to secure transportation to the point of destination. They had little or no interest in the vehicles which they were driving or in their employment other than as a means of transportation. They displayed less regard than other drivers for traffic regulations and for the safety and convenience of others using the highway. By the time they reached the state, they were usually in a nearly exhausted physical condition and in a hurry to reach their destination in California. In many instances, when a driver was involved in an accident, or in an unusual delay, or had reached a point where he was satisfied to leave the caravan, he abandoned his vehicle on, or dangerously near, the highway unattended,

to the hazard and inconvenience of the users of the highways.

Most of the cars caravaned into the state for sale were and are driven over United States Highways 80, 99, 60, 66, 91, 50, 395, 40, and also on California Highway Route 168. Most of these highways are, for the greater part of their length, two-lane highways traversing routes which require and have numerous curves both horizontal and vertical and grades in the road and which pass through numerous small towns which they serve as main streets and as their only through streets.

The number of caravaned cars transported for sale increased greatly from 1931 to 1936. Approximately 14,000 cars were caravaned during each of the years 1935 and 1936. In 1937, following the adoption of the California Caravan Act, the volume of the traffic decreased materially. The conditions, both as to the operation and hazards and the personnel, were before the California legislatures of 1935 and 1937, which sought to deal with the problem, and have continued unchanged to the present time. They warrant the special treatment of the problem through this type of legislation. They are akin to the conditions which the court found in Morf *v.* Bingaman, 1935, 298 U. S. 407, 411, when it said:

> "There is ample support for a legislative determination that the peculiar character of this traffic involves a special type of use of the highways, with enhanced wear and tear on the roads and augmented hazards to other traffic, which imposes on the state a heavier financial burden for highway maintenance and policing than do other types of motor car traffic. We cannot say that these circumstances do not afford an adequate basis for special licensing and taxing provisions, whose only effect, even when applied to interstate traffic, is to enable the state to police it, and to impose upon it a reasonable charge, to defray the burden of this state expense, and for the privilege of using the state highways."

Prior to the development of the caravan method of transporting cars for sale, there was practically no fleet movement of cars upon the highways of California. There still is practically no fleet movement of cars on highways other than in connection with the transportation of cars for sale.

There is definite evidence to show that the safest way to handle the traffic is to assign traffic officers for the purpose of accompanying and convoying each fleet to its destination. The reason why it is not done generally now is the absence of funds. A system of general convoying would require a total of thirty-six officers to handle the caravaning on the main highways leading to the metropolitan areas of California. This not being possible at the present time, the department has attempted to solve the problem by providing additional highway patrolmen upon the highways over which such operations are usually or are likely to be carried on.

These statements as to the actual needs are confirmed by others, and especially by the testimony of Earl W. Personius, Captain of the Highway Patrol in charge of the enforcement of the caravan law in Zone No. 2.

Thirty men have actually been placed upon the various highways, who are needed to handle the traffic situation caused by caravaning and to enforce the Act. Three men have been assigned to investigate registrations suspected of caravaning into the state of California for the purpose of sale and on which the caravan license was not paid. Additional men performing administrative functions at the border patrol station have had to be supplied. Additional clerical assistance has also been required at the Sacramento office of the Division of Registration of the Department of Motor Vehicles made necessary by the additional administrative functions. To this must be added increased supplies and transportation for the men.

On the basis of an average of 14,000 caravaned motor vehicles per year, the income of the state from the tax collected to reimburse it for this policing would amount to $104,000.00 a year. Without making a detailed computation, I am satisfied that the cost to the state, without taking into consideration expanding future needs, approximates that amount.

It is true that the computations are not exact. By their very nature, they cannot be. Unless we resort to one of those highly complicated cost accounting systems in vogue in large industrial plants, it is difficult, if not impossible, to estimate definitely the time which each officer actually devotes to the problems caused by caravaning. This is especially true when the attack is made, as here, *shortly after a statute goes into effect.* When this is the case, it is

> "*impossible then to determine whether the fees would prove to be in excess of the administrative requirement, and in this situation it is sufficient if it is shown that the charges are not unreasonable on their face.* As was said in Patapsco Guano Co. *v.* Board of Agriculture, 171 U. S. 345, 354, '*If the receipts are found to average largely more than enough to pay the expenses, the presumption would be that the legislature would moderate the charge.*' " (Bourjois, Inc. *v.* Chapman, 1936, 301 U. S. 183, 187.) (Italics added.)

When an Act is challenged on this ground, all that need be shown is that there was warrant in fact, for the imposition of the particular exaction. In determining this, we must, in the end, rely, as, no doubt, *the Legislature did,* upon the opinion of those charged with the enforcement of the motor vehicle laws of the state as to what additional personnel was necessary to meet the problem and as to the time which others, now otherwise employed, must devote to the duties flowing from the enforcement of this Act. A comparison of the number of automobiles in this traffic with the whole number on the state's highways leads nowhere. The problem created is special and unrelated to mere numbers. Nor can we, in dealing with a traffic movement of this character, set it apart and try to trace directly every one of its effects. We must consider the *gestalt,* or the configuration, which is formed by the entire traffic problem which this particular traffic movement helps complicate, and we must assume that the legislature did so in determining upon the particular legislation. The facts creating the problem were placed before the legislature, before the Act was passed. The facts relating to the ex-

penditures traceable to the enforcement of the Act since its enactment are before us. The legislature, in setting the fee, could but approximate the cost from the nature of the problem as it then existed. The evidence in the record warrants the conclusion that it approximated correctly, and that the fee of $7.50 is not excessive, but is a reasonable compensation to reimburse the state for the additional expenditure it has incurred in attempting to handle the administrative and police problems which this form of traffic has created.

The burden of proving the contrary is upon the plaintiff. (See: Hendrick *v.* Maryland, 1915, 235 U. S. 610, 624; Interstate Busses Corp. *v.* Blodgett, 1928, 276 U. S. 245, 251; Ingels *v.* Morf, *supra,* at p. 294) If—because of the generality of certain statements by enforcing officers, caused by the absence of a definite method of measuring the allocation of every item of money that may be derived from this source, we strike down the statute—we would change the burden of proving excessiveness, now lying on him who attacks a statute into the burden of proving the contrary and shift it to the state. (See Footnote 1.)

In approaching legislation of this character, we should bear in mind that

> "The judicial function under the commerce clause as well as the Fourteenth Amendment, stops with the inquiry whether the state legislature in adopting regulations such as the present has acted within its province, and whether the means of regulation chosen are reasonably adapted to the end sought." (South Carolina State Highway Dept. *v.* Barnwell Bros., Inc., 1938, 303 U. S. 177, 190.)

Little need be said on the alleged discrimination between intra-zone and inter-zone caravaning and between inter-zone caravaning and non-resident automobilists who may enter the state without the payment of a caravaning license.

It is *no one's* privilege to use state highways for private gain. They are, as the Supreme Court said in Stephenson *v.* Binford, 251, 264:

> "public property; (that) their primary and preferred use is for private purposes; and (that) their use for purposes of gain is special and extraordinary, which, generally, at least, the legislature may prohibit or condition as it sees fit."

The non-resident automobilists, if they come to California, do so for business or pleasure, or as prospective residents. Tourism is a great California industry. The benefits which the State derives from non-resident automobilists coming to the State, would warrant their being placed in a class by themselves and having extended to them the privilege of the use of the State's highways upon conditions different from those extended to persons driving over the highways of the state caravaned automobiles for sale. The caravaning of automobiles within a particular zone is done chiefly by large automobile manufacturers and is performed by regular employees who are residents of the state. The fact that caravaned automobiles are manned by persons, who, in most instances, perform the act of caravaning for the specific occasion of a specific sale—that, in many instances, the drivers are not residents of the state—furnishes a sufficient foundation for a distinct classification. There is more ground for a distinction based upon the casual character of the employment and of the type of persons employed, than there is in distinguishing, for licensing purposes, itinerant merchants from regular merchants, a classification which has been upheld uniformly. (See, Emert *v.* Missouri; 1895, 156 U. S. 296; Baccus *v.* Louisiana, 1914, 232 U. S. 334; Ex parte Gilstrap, 1915, 171 Cal. 108, 152 P. 42.)

There is no hard and fast constitutional rule by which classifications can be judged. Only those manifestly arbitrary will be denied sanction.

As said by Mr. Justice Sutherland in Bayside Fish Co. *v.* Gentry, 1936, 297 U. S. 422, 429:

> "It never has been found possible to lay down any infallible or all-inclusive test by the application of which it may be determined whether a given difference between the subjects of legislation is enough to justify the subjec-

tion of one and not the other to a particular form of disadvantage. A very large number of decisions have dealt with the matter; and the nearest approach to a definite rule which can be extracted from them is that, while the difference need not be great, the classification must not be arbitrary or capricious, but must bear some just and reasonable relation to the object of the legislation. *A particular classification is not invalidated by the Fourteenth Amendment merely because inequality actually results. Every classification of persons or things for regulation by law produces inequality in some degree; but the law is not thereby rendered invalid,* (Atchison, T. & S. F. R. Co. *v.* Matthews, 174 U. S. 96, 106) *unless the inequality produced be actually and palpably unreasonable and arbitrary.* Arkansas Natural Gas Co. *v.* Railroad Commission, 261 U. S. 379, 384, and cases cited." (Italics added.)

(And see, Joseph S. Finch & Co. *v.* McKittrick (D. C. Mo. 1938), 23 Fed. Sup. 244.)

The sporadic as distinguished from the permanent use of a highway, the occasional as contrasted with the regular engagement in transportation, and the personal as differentiated from the commercial use of a highway, have been sanctioned as constitutionally valid criteria in establishing classifications. Illustrative are the following: An act differentiating between a common carrier operating over regular routes between fixed termini and other carriers. (Bekins Van Lines *v.* Riley, 1929, 280 U. S. 80); an ordinance requiring that persons engaged in the business of letting out automobiles to be driven by others pay a license fee and deposit an insurance policy for the protection of persons and property against negligent operations by the lessees and not making a similar requirement from others. (Hodge Co. *v.* Cincinnati, 1932, 284 U. S. 335); an ordinance taxing motor carriers on the basis of gross ton miles, but exempting those operating wholly within a city or village and private carriers. (Continental Baking Co. *v.* Woodring, 1932, 286 U. S. 352); a statute imposing an annual license fee on private carriers by motor vehicle and exempting vehicles engaged in hauling farm products between certain points, and agri-

cultural and dairy products owned by producers. (Aero Mayflower Transit Co. *v.* Georgia Public Service Commission, 1935, 295 U. S. 285); a statute imposing a license fee for the transportation of persons or property on highways by motor vehicles for hire or compensation, but excluding vehicles operating exclusively within incorporated cities or towns and the like, (*Ex parte* Bush, 1936, 6 Cal. (2d) 43; 56 P. (2d) 511); a statute which gives preference to vehicles used in the business of their owners over those used by common carriers. (Bradley *v.* Public Utility Commission of Ohio, 1933, 289 U. S. 92). In the case last cited, the Court said:

> "It is contended that the statute as applied to the plaintiff violates the equal protection clause of the Fourteenth Amendment. * * * One argument is that the statute discriminates unlawfully against common carriers in favor of shippers who operate their own trucks. In dealing with the problem of safety of the highways, as in other problems of motor transportation, *the State may adopt measures which favor vehicles used solely in the business of their owners, as distinguished from those which are operated for hire by carriers who use the highways as their place of business.*" (Bradley *v.* Public Utility Commission, 289 U. S. 92, 97 (Italics added.)

Even if it be conceded that the enforcement of the statute may result in an advantage to residents of the state selling used automobiles, we should not, because of this, deny validity to it. The legislation being clearly within the state's power, neither legislative motives nor legislative polity should call for judicial interference. As said by the Supreme Court in South Carolina State Highway Dept. *v.* Barnwell Bros., Inc., 1938, 303 U. S. 177, 190, 191:

> "When the action of a legislature is within the scope of its power, fairly debatable questions as to its reasonableness, wisdom and propriety are not for the determination of courts, but for the legislative body, on which rests the duty and responsibility of decision. Jacobson *v.* Massachusetts, 197 U. S. 11, 30; Laurel Hill Cemetery

v. San Francisco, 216 U. S. 358, 365; Price *v.* Illinois, 238 U. S. 446, 451; Hadacheck *v.* Sebastian, 239 U. S. 394, 408-414; Thos. Cusack Co. *v.* Chicago, 252 U. S. 526, 530; Euclid *v.* Ambler Realty Co., 272 U. S. 365, 388; Zahn *v.* Board of Public Works, 274 U. S. 325, 328; Standard Oil *v.* Marysville, 279 U. S. 582, 584. *This is equally the case when the legislative power is one which may legitimately place an incidental burden on interstate commerce. It is not any the less a legislative power committed to the states because it affects interstate commerce, and courts are not any more entitled, because interstate commerce is affected, to substitute their own for the legislative judgment.''* (Italics added.)

Hence my conviction that the challenged Act is a valid exercise of the police power of the state, which does not transgress the commerce clause (Constitution of the United States, Art. I, Sec. 8) or the equal protection or due process clauses of the Constitution of the United States. (Constitution of the United States, Fourteenth Amendment, Cl. 1.)

Dated this — day of July, 1938.

LEON R. YANKWICH,
United States District Judge.

(Note to Text Follows:)

FOOTNOTE 1:

In Great Northern Ry. Co. *v.* Washington, 1936, 300 U. S. 154, from which the main opinion quotes, there is the following statement which would seem to place on the state the burden of proving the reasonableness of the charges:

> ''The court thought the plaintiff had the burden of showing that the sums exacted from rail carriers substantially exceeded the amounts expended for regulation and supervision, and the proofs offered were insufficient to shift the burden to the defendant. *This view was erroneous.* Foote & Co. *v.* Stanley, 232 U. S. 494.'' (P. 162.) (Italics added.)

The opinion was by a divided court. The minority opinion written by Mr. Justice Cardozo and concurred in by The

Chief Justice, and Justices Brandeis and Stone, insisted that the burden is the other way:

> "*Still the burden is on the railroads to satisfy the court that what was contributed by them was more than what was expended for their account, since otherwise the common pot may have been a help and not a hurt.* That burden was not discharged. Far from being discharged, there was a disclaimer of any attempt or purpose to discharge it. And so the case must fail." (Pp. 168-169.) (Italics added.)

Even if the majority opinion be taken as controlling, the case is clearly distinguishable. The court there was dealing with a state tax levied *directly* on interstate carriers, to cover state inspection and supervision. In other words, the court was dealing with a *direct levy* on interstate commerce. Here we are dealing with a levy *primarily* intrastate, which *may* affect interstate commerce only indirectly. When this is the case, the burden to prove excessiveness is always on those who challenge the levy. It never shifts. Great Northern Ry. Co. *v.* Washington, *supra,* was decided on February 1, 1937. On April 26, 1937, the Supreme Court in Bourjois, Inc., *v.* Chapman, 1937, 301 U. S. 183, 187-188, *speaking unanimously,* through Mr. Justice Brandeis, who had been one of the dissenters in the former case, distinguished it in the manner just stated, saying:

> "Here, the statute operates *directly only upon intrastate commerce. Where interstate commerce is only indirectly affected, it rests upon one challenging the legislation to show actual undue burden upon such commerce.* See Pacific Telephone & Telegraph Co. *v.* Tax Commission, 297 U. S. 403. The mere fact that the fees imposed might exceed the cost of inspection is immaterial." (Italics added.)

However, I am of the view that even if the burden is on the state to show that the exactions under this statute are not excessive, it has met it.

(Endorsed:) Filed Oct. 19, 1938. R. S. Zimmerman, Clerk, by Edmund L. Smith, Deputy Clerk.

SUBJECT INDEX.

PAGE

Opinion Below, and Dissenting Opinion 1

Jurisdictional Statement 1

Statement of the Case 2

The Statute in Question 2

District Court's Findings of Fact 5

The Evidence 6

Assignment of Errors 9

Summary of Argument 13

Argument 15

I.

The classification made by the statute is valid 15

(a) The interstate traffic described 17

(b) The interzone traffic described 25

(c) The intrazone traffic described 27

(d) The validity of the classification between the interstate and interzone movements, on the one hand, and the intrazone movement on the other, under the evidence, is established by the decisions of this Court 39

(e) The classification is not invalid because many single motor vehicles are operated upon the highways for all purposes, nor because many vehicles come into the state annually for other purposes than for sale and are not subject to the act, nor because some vehicles not in fleets may be subject to the act 43

PAGE

II.

The entire volume of the traffic within the act is properly included, and that not within is properly excluded. The practical classification of this traffic made by this act is similar to that made by statutes or administrative rulings in many other states with respect to similar traffic..... 46

III.

The fees required are not excessive..... 58

IV.

If any part of the act is invalid the Court should hold that part invalid only and leave the remainder of the act in effect 70

Conclusion 72

TABLE OF APPENDICES.

Appendix A—Caravan Act of 1937, Chapter 788, page 2253, Statutes of 1937 of California..... 73

Appendix B—Caravan Act of 1935, Chapter 402, page 1453, Statutes of 1935 of California..... 79

TABLE OF AUTHORITIES CITED.

CASES CITED.

Aero-Mayflower Transit Co. v. Georgia Public Service Commission, 295 U. S. 285 ..... 40, 42
Bacon Service Corporation v. Huss, 199 Cal. 21, 248 Pac. 235 70
Bain Peanut Co. v. Pinson, 282 U. S. 499 53
Carley & Hamilton v. Snook, 281 U. S. 66 70
Central Lumber Co. v. South Dakota, 226 U. S. 157 55
Clark v. Poor, 274 U. S. 554 66
Continental Baking Co. v. Woodring, 286 U. S. 352 ..... 15, 40, 41
Dixie Ohio Express Co. v. State Revenue Commission, 59 S. Ct. Rep. 435 66
Euclid v. Ambler Realty Co., 272 U. S. 365 57
Frost v. Oklahoma Corporation Commission, 278 U. S. 515 70
Hebe Co. v. Shaw, 248 U. S. 297 57
Hicklin v. Coney, 290 U. S. 169 ..... 40, 42
Ingels v. Morf, 300 U. S. 290 ..... 2, 3, 4, 58, 60, 66, 70
Interstate Busses Corporation v. Blodgett, 276 U. S. 245 ..... 15, 66
Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61 53
Morf v. Bingaman, 298 U. S. 407 ..... 15, 43, 47, 51, 52
Morley Construction Co. v. Maryland Casualty Co., 300 U. S. 185 16
New Mexico ex rel. McLean v. D. & R. G. Ry. Co., 203 U. S. 38 42
New York v. Hesterberg, 211 U. S. 31 57
Patsone v. Pennsylvania, 232 U. S. 138 ..... 53, 55
Pierce Oil Corp. v. Hope, 248 U. S. 498 57
Pullman Co. v. Knott, 235 U. S. 23 15
Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192 56
Schuler, Ex parte, 167 Cal. 282, 139 Pac. 685 70
South Carolina State Highway Dept. v. Barnwell Bros. 303 U. S. 177 ..... 16, 25

PAGE

Sproles v. Binford, 286 U. S. 374 40
Supervisors v. Stanley, 105 U. S. 314 70
Welch Co. v. State of New Hampshire, 59 S. Ct. Rep. 438 71
Weller v. People, 268 U. S. 319 70

MISCELLANEOUS.

110 American Law Reports 622 52
Arizona, Attorney General's Opinion of July 1, 1935 47
Bureau of Motor Carriers Andministrative Ruling No. 33 52
Colorado, Public Utilities Commission 1938 Rules, Common Carrier Rule 26, Commercial Carrier Rule 6, Private Carrier Rule 26 47
Idaho, 2d Extra. Ses. L., 1935, ch. 2 (sustained in Wallace v. Pfost, 57 Idaho 279, 65 Pac. (2d) 725), 110 A. L. R. 622) 47
John P. Fleming Common Carrier Application, No. MC-48654, ... M. C. C. ....., September 19, 1938 49
Kansas, Kansas Corporation Commission ruling of September 17, 1935 48
Missouri, Public Service Commission Rule No. 24-A of General Order No. 33-A, dated Sept. 17, 1938 48
Montana, Attorney General Opinions, Vol. 16—No. 168, p. 172; No. 375, p. 368 48
North Dakota, Board of Railroad Commissioners' Construction of Chapter 162, Session Laws of 1933 48
Oregon, Public Utilities Commissioner's Construction of Sec. 55-1357, Oregon Compiled 1935 Supp 48
Webster's New International Dictionary 49

STATUTES. PAGE

Arkansas, Act 183 of the General Assembly, 1935, as amended.. 47
California Statutes of 1935, Chapter 29, Sections 182-183.....58, 66
Caravan Act of 1935, Chapter 402, page 1453, California Statutes of 1935 .....2, 3, 4, 5
Caravan Act of 1937, Chapter 788, page 2253, California Statutes of 1937 66
1937 Cum. Supplement to Compiled Statutes, Section 60-801..50, 51
Judicial Code, Sections 238(3) and 266..... 2
Motor Carrier Act, 1935, Title 49 U. S. C. Sections 301 to 327 .....46, 48
Nebraska, Secs. 60-801 and 60-302, 1937, Cum. Supp. to Compiled Statutes (sustained in U. S. Dist. Ct. of Nebraska in Kenosha Auto Transport Co. v. Cochran on March 1, 1938).... 47
Nevada, 1935 Stat., p. 261, ch. 126, secs. 1, 2(g), 10(3) and (4) 47
New Mexico, Session Laws of 1935, ch. 56 (sustained in Morf v. Bingaman, 298 U. S. 407)..... 47
Oklahoma, Session Laws of 1935, ch. 50, art. 5, secs. 4 and 5.... 47
Texas, Acts of 1935, 44th Legislature, p. 800, ch. 342, sec. 1..... 47
United States Codes Annotated, Title 28, Sections 345(3) and 380 2
Utah, Laws of 1935, p. 90, ch. 46, secs. 90-96, 138..... 47
Washington, Remington's Rev. Stat., secs. 6382-60 to 6382-70.... 47
Wyoming, secs. 1(r), 15, 16, 17 and 21 of ch. 65, Ses. Laws of 1935, as amended by ch. 121, Ses. Laws of 1937..... 47

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1938

No. 534

RAY INGELS, as Director of the Department of Motor Vehicles of the State of California, *et al.*,

Appellants,

vs.

PAUL GRAY, INC., a California corporation, *et al.*,

Appellees.

BRIEF OF APPELLANTS.

With Appendices.

Opinion Below.

The opinion of the District Court is reported in 23 Fed. Supp. 946 [R. 36], and the dissenting opinion at page 950 [R. 43].

Jurisdictional Statement.

Statement as to jurisdiction was filed as required, and probable jurisdiction was noted on January 9, 1939.

Statement of the Case.

This is an appeal from the final decree of a district court of three judges (Judicial Code, Sections 238 (3) and 266; U. S. C. A., Title 28, Sections 345 (3) and 380), which enjoined appellants, defendants below, officers of the State of California, from enforcing against appellees the provisions of Chapter 788, page 2253, Statutes of 1937 of the State of California [Appendix A, p. 73], as unconstitutional.

The Statute in Question.

The act in question is known as the caravan law. It became effective July 2, 1937. It was enacted by the legislature after the California Caravan Act of 1935 [chapter 402, page 1453, Statutes of 1935, Appendix B, p. 79], was held unconstitutional by this Court on March 1, 1937, in *Ingels v. Morf,* 300 U. S. 290.

Except for two important differences, which will be hereinafter noted, the two statutes are substantially similar.

The present act, in section 1, defines caravaning as

> "The term 'caravaning' as used in this act shall mean the transportation of any vehicle of a type subject to registration under the Vehicle Code, operated on its own wheels, or in tow of a motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, purchaser or prospective purchaser, whether such agent, dealer, purchaser or prospective purchaser may be located within or without this State."

The act requires two fees, each of $7.50, for a permit for caravaning a vehicle on the California highways. A

permit is valid as to the original permittee and vehicle for a period of six months after the date of issue for the purpose of caravaning the vehicle, and no other permits or fees are required for caravaning. A permit is not transferrable from person to person or vehicle to vehicle. The permit is not limited as to routes or area.

The first difference between the present act and the 1935 act is the following:

The 1935 act (section 6) placed the fee, $15.00, in the general fund in the state treasury and recited that

> "The moneys so derived by the State are intended to reimburse the State treasury for the added expense which the State may incur in the administration and enforcement of this act and the added expense of policing the highways over which such caravaning may be conducted * * *."

This Court held in *Ingels v. Morf, supra*, that by reason of that express declaration the fee must be considered as exacted only for purposes of administration and enforcement, could not be considered a fee for the privilege of using the highways, was substantially larger than was necessary to defray the costs of administration and enforcement, and was therefore a forbidden burden on interstate commerce. That was the sole ground of the decision.

To meet that objection the legislature provided in the present act (section 4) for the following fees:

> "* * * a fee of seven and fifty one-hundredths dollars as compensation for the privilege of using the public highways of this state and a fee of seven and fifty one-hundredths dollars to reimburse the State for expense incurred in administering police

> regulations pertaining to the operation of vehicles moved pursuant to such permits and to public safety upon the highways as affected by such operation."

And in section 7 the act provides that all fees shall be collected by the Motor Vehicle Department, appropriates one-half of the fees for the support of the Department of Motor Vehicles (which administers and enforces the caravan act), appropriates the other half of the fees to the state highway fund, and declares:

> "The moneys so derived by the state are intended as compensation for the privilege of using the highways of this State and to reimburse the State treasury for the added expense which the State may incur in the collection of such fees and in the administration and enforcement of this act and the expense of policing the highways over which such caravaning may be conducted."

The other difference between the two acts is this. The 1935 law limited its application to, and defined caravaning as (section 1):

> "* * * the transportation from without the State of any motor vehicle operated on its own wheels, or in tow of another motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, manufacturers' representative, purchaser or prospective purchaser * * *."

With respect to that this Court said in *Ingels v. Morf, supra:*

> "We do not discuss appellants' suggestion that, contrary to the finding below, there is no evidence of comparable traffic moving intrastate, and hence

no discrimination against interstate commerce by the failure of the Act to exact a fee of those engaged in intrastate commerce."

The present act, by section 1, applies to all caravaning, interstate or intrastate, but by section 8 creates the following exception:

> "Sec. 8. The provisions of this act shall not apply to the transportation of motor vehicles between points within Zone 1 or between points within Zone 2, which zones are hereby defined as follows:
>
> "Zone 1—That part of the State of California lying within the counties of San Diego, Imperial, Orange, Riverside, San Bernardino, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Kern and Inyo;
>
> "Zone 2—That part of the State of California not included within Zone 1 as herein defined."

A map of the state showing these zones appears opposite page 32 of this brief.

It will thus be seen that all interstate caravaning, whether from without to within the state or *vice versa*, is subject to the present act, that intrastate commerce from one zone to another is also subject to the act, but that caravaning wholly within a zone is excepted.

District Court's Findings of Fact.

The District Court entered findings of fact and conclusions of law [R. 57], to which appellants have taken exception in their assignments of error [R. 169]. These will be discussed in the argument portion of this brief.

The Evidence.

The evidence consists of affidavits admitted by stipulation [R. 24] and oral testimony. Upon many points the evidence is without dispute.

In general the evidence bears upon the following matters: the type of traffic in motor vehicles on their own wheels for purpose of sale (1) interstate, (2) from one zone to another, and (3) wholly within a zone; and the cost of administration and enforcement of the act.

Counsel for the parties and the Court entered into a discussion of a proposed stipulation at pages 72-75, Record. Counsel for appellees, who offered the stipulation, apparently withdrew it and in its place put on the witness, Manford [R. 74, 75]. From the Manford testimony, or from the stipulation, it appears that at least eighty per cent of all automobiles brought into the State from without on their own wheels for purpose of sale are in convoys of three or more; and that of this eighty per cent that are in convoys, or fleets, from one-half to all are in two-car hook-ups, one vehicle towing another. This is all general evidence in general terms, apparently applying to the whole volume of the caravan traffic from without the State. No attempt was made to show that this general picture in any way is descriptive of appellees' particular operations. It is not related to appellees in any way.

Appellees' operations are specifically described, however, in the testimony of Al Asher, one of the appellees, and it was stipulated that the other appellees would testify as to their operations substantially the same as Mr. Asher [R. 107].

Mr. Asher testified [R. 105-106] that he has been engaged in caravaning automobiles into California since 1930 and that during that time he has caravaned in over 4000 cars. He has personally purchased cars, selected drivers, and conducted caravans to California. The majority of his cars come from Detroit and they are all used automobiles. His caravans consist of from 19 to 25 automobiles. To select drivers he runs an advertisement in a newspaper in Detroit advertising for drivers to drive a car to California; he interviews the drivers and selects not over half of the applicants. The driver must be 21 years old or more and must have a driver's or chauffeur's license from the state where they start. The average cost of the cars is $600 to $1000. He carries $10,000-$20,000 public liability and $5000 property damage insurance on his cars but no collision insurance. He has had two small claims which were paid by his insurance company.

He described the manner in which he conducted caravans to California as follows:

> "* * * it is my custom to put a man in front, and I have had my son in the lead, with instructions to set the pace, and govern the speed of the caravan on the road, and I ride on the rear end with a single automobile to take care of all of the details and keep the drivers in line and obeying the speed laws, and also keeping a sufficient distance apart, and their instructions were to keep at least 150 feet apart or the length of two telephone poles apart at least, and not to park except in proper places and to keep on the right side of the highway." [R. 106-107.]

The only other movement of motor vehicles in fleets is that from one zone to another, particularly from the Los Angeles to the San Francisco area and *vice versa.*

There is a recognized and noticeable movement of that character. [Ingels and Bates affidavits, R. 113, 114, 156.]

There is no movement in fleets wholly within a zone. A considerable number of cars are moved on their own wheels for purpose of sale wholly within a zone from assembly plants near Los Angeles and San Francisco, but these vehicles are never moved in two-car hook-ups or in fleets. Usually the cars are moved singly, sometimes two single cars together but not in a hook-up, and occasionally three single cars are so moved, each of such cars being driven by a driver employed regularly and full-time for that purpose by the company doing the transporting. Such drivers are California licensed and thoroughly familiar with the routes traveled. Such cars are driven short distances, only a small percentage of the total number being driven more than 100 miles, and most of them much less. [Affidavits of Busby, Peabody, Alexander, Stater, and Ehlers, R. 126, 131, 133, 135, 136.]

The affidavits of Holm, Cron and Shaw, respectively, show in detail the length of such intra-zone drive-away movements from the Ford assembly plant near Los Angeles [R. 121], the Chevrolet assembly plant near San Francisco [R. 127], and the General Motors assembly plant near Los Angeles [R. 119], and the figures given are summarized in tables at pages 32, 34 and 35 hereof and shown graphically in a map at page 32 hereof.

Testimony of state officials shows that administration and enforcement of the act and proper policing and regulation of the caravan traffic costs the state substantially in excess of $100,000. [R. 81-104.] The volume of caravan traffic has reached more than 14,000 vehicles per year, but since the 1937 act became effective this volume has shown a substantial decrease. [R. 81, 159.]

Assignment of Errors.

1.

The Court erred in holding said Chapter 788 to be in violation of the Commerce Clause of Section 8 of Article I of the Constitution of the United States, because said Chapter 788 does not discriminate against nor impose an unconstitutional burden upon interstate commerce, nor otherwise conflict with the Commerce Clause.

2.

The Court erred in holding said Chapter 788 to be in violation of the "equal protection of the laws" clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, because said Chapter 788 does not uncontitutionally discriminate against plaintiffs or any other persons nor deny the plaintiffs or any other persons equal protection of the laws.

3.

The Court erred in holding said Chapter 788 to be in violation of the "due process of law" clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, because said Chapter 788 does not impose unreasonable requirements upon plaintiffs and does not deprive plaintiffs of property without due process of law.

4.

The Court erred because on the entire record the plaintiffs and appellees have failed to sustain the burden of overcoming the presumption of correctness of the judgment of the legislature of California that a valid need of legislation existed, and that the class defined in said Chapter 788 includes the entire class properly the subject

of such legislation, and have failed to overcome the presumption that said Chapter 788 is reasonable and non-discriminatory.

5.

The Court erred in making that part of its findings of fact No. 6 which relates to the number of vehicles brought into California each year for the purpose of sale and the number of vehicles not in convoy, the number in convoy and the number in two's, first, because there is no evidence to support such finding, second, because the evidence affirmatively shows that said finding is erroneous, third, because said finding is wholly immaterial in view of the undisputed evidence showing the manner in which plaintiffs bring their vehicles into the State of California for purpose of sale.

6.

The Court erred in making finding of fact No. 7, for the reason that there is no evidence in the record to support such finding of fact and for the further reason that the evidence in the record shows that said finding of fact is erroneous. There is no evidence to establish that there are approximately 4,000 cars transported monthly entirely within Zone No. 1 for purpose of sale upon the highways, and there is no evidence to show that said cars are often moved in convoy, the evidence showing the contrary; and there is no evidence to show that many of said cars are transported through congested districts and for considerable distances.

7.

The Court erred in making finding of fact No. 8, for the reason that there is no evidence in the record adequate to support said finding.

8.

The Court erred in making finding of fact No. 9, because the evidence shows that cars brought into the State for the purpose of sale do create serious traffic problems differing entirely from the traffic problems created by the movement of cars intra-zone.

9.

The Court erred in making finding of fact No. 12, in that the evidence shows that the operation of cars in caravans does create special and additional hazards to passing traffic or to other users of the highway, and the evidence shows that said caravaning of cars does create a traffic problem necessitating special policing of said caravans, and the evidence shows that such caravaning of cars does create undue wear and tear on the roads and highways of the State.

10.

The Court erred in making the first part of finding of fact No. 13, in that the evidence shows that the statute in question is for the purpose of permissible highway regulation and for the purpose of obtaining permissible compensation for the use of the highways of the State.

11.

The Court erred in making the second, third, fourth and fifth parts of finding of fact No. 13, because the plaintiffs and appellees have failed to sustain the burden of showing that the license fee is excessive and bears no relation to the expense of the Motor Vehicle Department in policing the highways of the state; but the evidence in fact shows the contrary.

12.

The Court erred in making the sixth part of finding of fact No. 13, in that the evidence fails to show that said Chapter 788 creates an unreasonable and arbitrary classification because it applies only to persons using the highways for the transportation of motor vehicles for the purpose of sale and does not apply to other persons using said highways under comparable circumstances. The evidence shows that the persons to whom the act applies constitutes specialized form of highway traffic substantially distinct from other traffic, which creates substantial traffic and police problems differing from those of other traffic.

13.

The Court erred in making the seventh part of finding of fact No. 13, in that the evidence fails to show that the fees charged under said Chapter 788 are disproportionate to other taxes, fees or licenses charged by the State of California for the registration of vehicles within the state or for vehicles using the highways in the State; and the evidence shows the contrary.

14.

The Court erred in making the eighth part of finding of fact No. 13, in that the evidence fails to show that the license fees provided in said Chapter 788 are exorbitant, arbitrary or unfair, or that the interstate business in which the plaintiffs are engaged will suffer irreparable damage.

SUMMARY OF ARGUMENT.

I.

The classification made by the statute is valid.

(a) The interstate traffic is the movement of motor vehicles in integrated fleets of 19 to 25 automobiles, at least half of these being in two-car hook-ups with one car with a driver towing a driverless car; the drivers are mostly obtained in eastern states by newspaper advertising, are employed for the one trip to California only; the cars are used cars; the journey is more than 2000 miles in length; the drivers drive for many hours continuously and reach California in a fatigued condition and are not as attentive to careful driving as other drivers; the operation of the fleets causes traffic problems and hazards not present in any other type of highway traffic.

(b) The interzone movement. The only movement of motor vehicles in caravans or fleets in California, in addition to the interstate movement, is that from one zone to another.

(c) The intrazone movement of motor vehicles on their own wheels for purpose of sale is so entirely different from the interstate and interzone movements as to fully justify the action of the legislature in creating the intrazone exemption. The classification which is accomplished by including the interstate and interzone movements and excluding the intrazone movement brings within the scope of the law all those who move their vehicles in integrated fleets with picked-up, one trip drivers, and leaves out those who do not do so.

(d) The validity of the classification between the interstate and interzone traffic, on the one hand, and the intrazone traffic on the other, under the evidence, is established by the decisions of this Court.

(e) The classification is not invalid because many single motor vehicles are operated upon the highways for all purposes, nor because many vehicles come into the state annually for other purposes than for sale and are not subject to the act, nor because some vehicles not in fleets may be subject to the act.

2.

The entire volume of the traffic within the act is properly included, and that not within is properly excluded. The practical classification of this traffic, made by this act, is similar to that made by statutes or administrative rulings in many other states with respect to similar traffic.

A distinguishing and common attribute of this traffic is the caravan or fleet movement of a large proportion of the vehicles, and the operation of two vehicle hook-ups, but the entire volume of traffic including the vehicles moved singly is of such a character as to justify including the entire traffic in one legislative classification.

The description of the class includes only those who actually do move vehicles in caravans, and includes all such, and of the total volume of the vehicles moved by such included persons eighty per cent is moved in caravans.

3.

The fees required are not excessive. The record shows that regulation of the traffic and enforcement of the act costs the state in excess of $133,000 annually, and that the $7.50 fee for this purpose will produce substantially less than $105,000.

4.

If any part of the act is invalid the Court should hold only that part invalid and leave the remainder of the act in effect.

ARGUMENT.

I.

The Classification Made by the Statute Is Valid.

The statute applies to all those who move motor vehicles on their own wheels on the highways in interstate commerce or from one zone to another within the state for purpose of sale. The excepted movement is that wholly within a zone. The zones are shown on the map opposite page 32 hereof.

A classification is valid which includes only those "engaged in the transportation by motor vehicle of property sold or to be sold by him in furtherance of any private commercial enterprise." *Continental Baking Co. v. Woodring,* 286 U. S. 352 at 357, note 1-(d), even though certain types of carriers so engaged are exempted, *Id.* pp. 371, 373. It is fundamental that a class may properly be defined by describing "those from whom the evil mainly is to be feared," *Patsone v. Pennsylvania,* 232 U. S. 138 at 144; and that a statute will not be adjudged unconstitutionally discriminatory unless its operation causes actual discrimination in fact, *Interstate Busses Corp. v. Blodgett,* 276 U. S. 245; *Pullman Co. v. Knott,* 235 U. S. 23; *Morf v. Bingaman,* 298 U. S. 407.

In *Morf v. Bingman, supra,* the Court sustained a New Mexico statute, the practical effect of which was to tax and regulate the movement of motor vehicles on the highways in caravans and processions. That case is applicable here because the plaintiffs move their automobiles in caravans of 19 to 25 vehicles, and the intrazone traffic which is expressly exempted is a movement of single vehicles not in caravan which is free from the objectionable character-

istics of the caravan movement described in the *Bingaman* opinion.

It is true that the District Court made some findings of fact to the contrary, but an examination of the undisputed evidence demonstrates that the Court's findings on material points are largely erroneous. Not only is there no evidence to support them, but they are against uncontradicted evidence. Even in a suit between private parties "findings may be revised at the instance of an appellant, if they are against the weight of the evidence," *Morley Construction Co. v. Maryland Casualty Co.*, 300 U. S. 185 at 191; but the rule in this case goes farther than that. As was said in *South Carolina State Highway Department v. Barnwell Bros.*, 303 U. S. 177:

> "Hence in reviewing the present determination we examine the record, not to see whether the findings of the court below are supported by evidence, but to ascertain upon the whole record whether it is possible to say that the legislative choice is without rational basis."

The errors in the Court's findings will be pointed out as the argument proceeds.

In order to show clearly the propriety of the classification made by the statute we will now discuss in some detail the evidence which shows the type of traffic in motor vehicles on their own wheels for purpose of sale (a) interstate, (b) from one zone to another (both of these being subject to the act), and (c) intrazone, this being the exempted movement. The undisputed evidence shows that interstate and interzone caravaning are of the same type, being the movement of motor vehicles in fleets and with other distinct and objectionable features, and over long

distances; while intrazone caravaning is the movement of single cars not in fleets, for short distances, and free from the objectionable features which distinguish the interstate and interzone traffic.

(a) The Interstate Traffic.

The interstate traffic is the movement of motor vehicles integrated fleets of 19 to 25 automobiles, at least half of these being in two-car hook-ups with one car with a driver towing a driverless car; the drivers are mostly obtained in eastern states by newspaper advertising, are employed for the one trip to California only; the cars are used cars; the journey is more than 2000 miles in length; the drivers drive for many hours continuously and reach California in a fatigued condition and are not as attentive to careful driving as other drivers; the operation of the fleets causes traffic problems and hazards not present in any other type of highway traffic.

One of the plaintiffs, Al Asher, testified as to the manner of selecting his drivers and the caravaning of his cars [R. 105]. After his testimony was completed it was stipulated that the testimony of the other plaintiffs would be the same as Mr. Asher's [R. 107]. Therefore we examine the Asher testimony at length.

He has been caravaning automobiles into California since 1930; and during that time (he testified in October, 1937) he has caravaned in more than 4000 cars. He has personally had charge of caravans and selected drivers. The majority of his cars come from Detroit. They are all used automobiles, worth $600 to $1000. His caravans consist of from 19 to 25 automobiles. He obtains his drivers by running an advertisement in a newspaper in

Detroit for drivers to drive a car to California, and when the drivers appear he interviews them and selects not over half of the applicants. He has never investigated any references when given by applicants. The driver must be 21 or more years of age and must have a driver's or chauffeur's license in the state where the caravan starts. He prefers men 30 to 40 years of age. He carries $10,000—$20,000 public liability and $5000 property damage insurance on his cars. He has had two small damage claims only, these being paid by the insurance company. He then described the manner in which his caravans are operated, as follows [R. 106-107]:

> "* * * it is my custom to put a man in front, and I have had my son in the lead, with instructions to set the pace, and govern the speed of the caravan on the road, and I ride on the rear end with a single automobile to take care of all of the details *and keep the drivers in line* and obeying the speed laws, and also keeping a sufficient distance apart, and their instructions were to keep at least 150 feet apart, or the length of two telephone poles apart at least, and not to park except in proper places, and to keep on the right side of the highway." (Italics supplied.)

Here then is the picture of the manner in which the plaintiffs caravan their automobiles. If the cars keep 150 feet apart (we will point to evidence showing that caravans generally tend to close up closer), and if all single cars, they compose an integrated fleet, with front and rear conductors, 2850 feet to 3750 feet in length operating as a unit on two-lane highways (150′ x 19 = 2850′;

150′ x 25 = 3750′). The lead driver *sets the pace* and the rear driver *keeps them in line*. If the cars were all in two-car hook-ups except the lead and rear cars the length of the caravan might vary from 1500 feet to 2400 feet. The caravan represents an investment of $11,400 ($600x 19) to $25,000 ($1000x25), and all except two of the cars are in charge of drivers who were strangers to the owner of the caravan until just before the caravan started on a journey from Detroit to California, a distance of 2500 miles; drivers obtained by want-ads whose observable qualifications are limited to the possession of a driver's or chauffeur's license and the impression made upon the employer or his agent in one interview. That is why caravaning of the type carried on by the plaintiffs is conducted by the operation of *integrated, unit-operated,* caravans or fleets. That is why the owner of the caravan has a man in front whom he knows he can trust and a supervisor in the rear to *keep them in line.*

Imagine driving down a two-lane highway and trying to pass that caravan, either in the same or opposite direction of its travel. If the cars are actually 150 feet apart the passing might be accomplished by the laborious process of dodging in and out between the caravan cars to avoid collision with traffic in the adverse line; if the cars are much closer together than 150 feet such in and out dodging is impossible, and the motorist approaching from the rear must remain there and the motorist approaching from the opposite direction is going to be in constant embarrassment and peril from motorists who may grow impatient and attempt to pass from the rear.

These difficulties are further enhanced by the commonly observed fact that all vehicles on the highway do not move at a uniform rate of speed. Even a swiftly moving, perfectly coordinated caravan will come up behind a slowly moving vehicle. If the caravan remains behind, all of its ordinary difficulties of traffic congestion are greatly aggravated; if the caravan attempts to go around the slowly moving vehicle both lanes of the highway are blocked during the process.

This picture is not fancied; it is testified to by traffic officers as being the regular condition caused by the operation of caravans on the highways. E. Raymond Cato, Chief of the California Highway Patrol since January 8, 1931, stated in his affidavit [R. 158-159]:

> "The caravans which I observed ran train-like. In other words, they would remain close together, traveling in a group or fleet. Often, by remaining close to each other, the cars in such fleets would not permit traffic going in the same direction to pass a single car in the fleet, and thus interrupt the continuity of the fleet. This would cause an additional traffic hazard when vehicles attempted to pass the entire fleet, resulting, in many instances, in head-on collisions, side-swiping, and upsets.
>
> "On the open highways said fleets would not usually drive at the maximum speed allowed (45 miles per hour), as resident drivers do, but would drive at a slightly slower speed. In general, the larger the caravan the slower the speed would be at which they traveled. This would make it necessary for

more cars to pass such fleets than would have occasion to pass the ordinary traffic."

* * * * * * * * *

"Most of these highways are, for the greater part of their length, two-lane highways, traversing routes which have numerous curves (both horizontal and vertical) and grades in the road, and which pass through numerous small towns whose main streets and only through streets are such two-lane highways."

Earl W. Personious, a Captain of the California Highway Patrol, testified:

"I draw a distinction between intra-zone traffic and inter-state traffic in so far as caravans are concerned because of the fleet movement of cars coming from without the State. The main route that I am familiar with is U. S. 40 coming through Truckee and there is a large amount of fleet movement over that highway. The fleet movements are entirely inter-state." [R. 82.]

He testified that all of the highways entering the portion of California under his supervision are two-lane highways and pass through a mountainous area, and that the hazard from driving over such area is increased by reason of the movement of cars in fleets [R. 85-86], and that

"* * * In addition to that is the normal flow of traffic which will congest in mountain roads, more or less, but where you have the hook-ups in fleets, I have known the congestion in traffic to be for a half or three-quarters of a mile, and where it would be impossible to get by the fleet in hook-ups." [R. 86-87.]

He testified that it is customary practice in fleet movements to maintain the fleet as a unit on the highway [R. 87], and that:

> "Single cars pile up in normal traffic, but as soon as there is a space, one will go by and pass another, and in a very little ways you will have a clear distance and the congestion is over, whereas with caravans they are all held together and continue with the congestion and there is that hazard throughout the mountain highway, or until you come to a highway and have more open highways." [R. 87.]

> "From my observation of the fleet movements of cars over the highways under my supervision, and from my observation of those highways, those highways as at present constructed are not adequate to safely accommodate the caravan-type of traffic. I apply that to the border mountain counties more than the others on account of winding hazards." [R. 89.]

> "The tendency is for the cars in the group to keep together and that is where the problem comes in—the tendency to keep together on the highway." [R. 99.]

Some of the reasons for this fleet movement are disclosed in the affidavit of Ray Ingels, Director of Motor Vehicles of California, as follows:

> "The reasons for the movement of automobiles as above described in fleets or groups on their own wheels for purpose of sale are as follows: Automobiles that are to be moved into the State of California originate in States of large population east of California where

used cars can be cheaply purchased or where new cars are manufactured. Such points of origin are principally mid-continent points. This necessitates a long movement to destination. The owners of the cars therefore originated the system of gathering together a fleet of vehicles so to be moved and putting them in charge of a caravan manager and a mechanic to supervise their movement to California. In the case of the movement of used cars, it is particularly desirable to have the fleet accompanied by a mechanic who can make necessary repairs enroute. Drivers of caravaned cars are often unacquainted with routes and it is desirable and necessary to have them accompanied by one who is familiar with routes and can be relied upon to see that the vehicles are brought to destination. Most of the drivers of caravan cars are employed for the one trip only from eastern points to destination within California. They are obtained by advertising or other solicitation. Various arrangements for compensation for making the trip are made with them, but in most cases one element of compensation the drivers consider of value is the opportunity to receive transportation to California. After arrival in California such drivers remain there and do not return east. The caravan manager takes a fleet of cars with drivers of that type in charge and buys gasoline and meals and pays other expenses of the trip. The management of a group of drivers and cars by one experienced individual results in a saving of expenses because of the collective handling of the finances of the trip.

"Because of the reasons which have led to the movement of vehicles in fleets there are comparatively few cars that are moved from without the State of California to within the State for purpose of sale singly and not in a fleet." [R. 113-114.]

"Where vehicles are moved in fleets it is the practice to stop the entire fleet when one vehicle has mechanical trouble and requires repairs. This is to keep the fleet together under the supervision of the caravan manager and to keep it within access of the mechanic. A fleet also stops for meals or when for any other reason it is necessary for any one car to stop. This frequently results in causing a traffic tie up on the highway because when a fleet stops the rear cars will pull out into the adverse lane. Even when a fleet is stopped upon the highway and all vehicles are in the right lane vehicles approaching from either direction have difficulty in passing the fleet because of its occupancy of a long stretch of one of the traffic lanes. This difficulty is accentuated when the fleet is in motion on the highway." [R. 115.]

"I have personally talked with drivers of caravan cars who have brought such cars from without the state to within the state and they have told me of driving sixteen or eighteen hours out of twenty-four in order to arrive in California in the shortest possible time. They state that as a general practice stops for meals are irregular and the time allowed for meals is short. Drivers that I have talked with and observed immediately upon their arrival at destinations in Cali-

fornia have shown evidence of fatigue and weariness and have expressed themselves as very tired from the long trip." [R. 114.]

The same and other reasons for the fleet movement are pointed out in the affidavits of Tod Bates, General Manager of the Motor Car Dealers' Association of San Francisco [R. 150], and Glenn S. Roberts [R. 138].

District Court's Findings of Fact.

In view of the foregoing evidence, all undisputed, much furnished by the testimony of the appellees themselves, it is plain that there is absolutely no foundation for the District Court's findings of fact Nos. VI, IX, and XII. [R. 63-65.] Certainly this evidence is sufficient to sustain the legislative judgment. *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U. S. 177.

(b) The Interzone Movement.

The only movement of motor vehicles in caravans or fleets in California in addition to the interstate movement, is that from one zone to another. This is established by undisputed evidence.

Ray Ingels, Director of Motor Vehicles of the State of California, stated in his affidavit:

"In addition to the movement from without to within the State the only other movement in fleets or groups is the occasional movement of automobiles in fleets or groups for the purpose of sale from the Los Angeles area to the San Francisco area, or vice

versa, and the occasional movement of automobiles in fleets or groups for purpose of sale from the Los Angeles or San Francisco areas to points outside of the state." [R. 113.]

After describing the reasons which had led to the fleet movement from without to within the state, Mr. Ingels stated:

"For some of the same reasons when a number of cars are to be moved from the Los Angeles area to the San Francisco area, or vice versa, on their own wheels for purpose of sale, dealers find it expedient to move them in fleets. The same is commonly true to the movement of vehicles for purpose of sale moved on their own wheels from California points to without the State." [R. 114.]

Tod Bates, general manager of the Motor Car Dealers' Association of San Francisco, having many years' experience as an automobile dealers' association executive, stated in his affidavit:

"* * * that at certain seasons in the year and under certain circumstances there is a movement of used cars originating at Los Angeles and destined for San Francisco and vicinity; that there are only two main traveled, practicable highways between the two principal cities in California, and that at points located approximately at the line between zone one and zone two the two highways in question are virtually bottlenecks, that is they are narrow, two lane roads and are frequently subjected to congestion,

and that such congestion as exists would be augmented and aggravated by the encouragement of a greater volume of through traffic between the two cities above mentioned, and particularly of the fleet or caravan movement of cars; that when such caravaning is conducted, originating at Los Angeles and destined to San Francisco, the movement usually consists of used automobiles and is usually consummated by the operation of hook-ups in fleets or caravans in substantially the same manner as the interstate movement heretofore described." [R. 156.]

District Court's Findings of Fact.

From the foregoing, also undisputed, it is evident that the District Court's finding of fact Nos. VII and XIII [R. 63, 65] are not only without support but they are contrary to the undisputed evidence.

(c) The Intrazone Movement.

The intrazone movement of motor vehicles on their own wheels for purpose of sale is so entirely different from the interstate and interzone movements as to fully justify the action of the legislature in creating the intrazone exemption. The classification which is accomplished by including the interstate and interzone movements and excluding the intrazone movement brings within the scope of the law all those who move their vehicles in integrated fleets with picked-up, one trip drivers, and leaves out those who do not do so. This is established by undisputed evidence.

A number of witnesses testified or presented affidavits showing the foregoing to be true. W. J. Holm, traffic manager of the Ford assembly plant at Long Beach, California, a suburb of Los Angeles, and George D. Cron, traffic manager of the Chevrolet assembly plant at Oakland, California, presented affidavits [R. 121, 127] stating in detail the number and destinations of cars moved intrazone from such plants on their own wheels during representative periods, and manner of such movements. M. F. Shaw, manager of the Pacific Motor Trucking Company in Southern California, described in his affidavit the transportation of General Motors cars from the assembly plant at Southgate, California (near Los Angeles), showing by a schedule the detailed movements of vehicles from such plant on their own wheels [R. 119].

Preliminary to considering this specific data, however, we present the general statements of a few witnesses.

Ray Ingels, Director of Motor Vehicles of the State of California, stated in his affidavit:

> "I know the geographical location of the counties of California that are placed within zones 1 and 2 by Section 8 of Chapter 788, California Statutes of 1937. I know that from one point to another within a single zone there is no movement of automobiles upon their own wheels for purpose of sale in fleets or groups. The reasons which induce the movement of vehicles in fleets from without to within the State of California and *vice versa*, and from one zone to another in the state, do not obtain in the movement wholly within a zone. Such movement, aside from

the movements from assembly plants, consist of the occasional movement of single cars from one point to another.

"The movement of single cars not in fleets upon their own wheels for purpose of sale in California is conducted almost entirely between points within a single zone. Cars so moved are driven by California residents who are mechanics or chauffeurs regularly employed by the dealers owning such cars. Such movement in its entire length necessarily consumes only a few hours and the drivers are not fatigued during any portion of the journey." [R. 114-115.]

* * * * * * * *

"Cars that are moved from assembly plants in California to the place of sale on their own wheels are not moved in groups or fleets, nor in two car hook-ups but are moved singly a car at a time, such movement being confined in all except a comparatively few instances to an area of about a fifty mile radius around such assembly plants, with occasional movements as far as 100 miles and a very few beyond a hundred miles." [R. 113.]

Earl W. Personius, Captain of the California Highway Patrol, testified:

"I draw a distinction between intra-zone traffic and interstate traffic in so far as caravans are concerned because of the fleet movement of cars coming from without the state. * * * The fleet movements were entirely interstate." [R. 82.]

Tod Bates, General Manager of the Motor Car Dealers Association of San Francisco, stated in his affidavit [R. 154-155]:

"Affiant further states that there is no such fleet movement of vehicles wholly between points within Zones 1 or 2, respectively, as said zones are defined in Chapter 788 of the California Statutes of 1937; that new car assembly plants and distributors in California, customarily deliver new cars to dealers, for sale, by either the 'drive-away' method or the 'truck-away' method; that the latter method is customarily employed for deliveries outside of the metropolitan areas of San Francisco-Oakland, and Los Angeles, respectively; that practically all of the 'drive-away' deliveries of new cars in California are confined to the San Francisco-Oakland metropolitan area in the Northern part of the State and the metropolitan area of Los Angeles County in the Southern part of the State, such deliveries usually being within districts of 30 miles from the assembly plant. Within said areas there are sufficient highways so that there is no congestion or additional hazard caused by such deliveries; the cars so 'driven-away' for delivery are always operated singly, not in hook-ups, and never in groups of more than four cars; the cars so delivered are driven by regular employees of the person furnishing the carrier service by which such deliveries are made, or by regular employees of the dealer taking delivery, or by the individual purchaser taking delivery; that such persons are therefore familiar with California traffic laws and practices, are engaged in a transportation movement which is completed in an elapsed time which usually does not exceed one hour, are in good physical condition, are thoroughly familiar with the highways and traffic conditions which prevail on

the roads which they traverse, and have an interest in their permanent employment and/or in the car which they are driving."

George D. Cron, traffic manager of the Chevrolet assembly plant at Melrose, California (adjoining Oakland), presented an affidavit describing in detail the movement of automobiles from such plant on their own wheels [R. 127]. All authorized Chevrolet dealers in California receive from such assembly plant all passenger cars and trucks which they distribute. The usual mode of delivery is by rail, boat or truck; in the last-named method the vehicles are carried on a truck. Vehicles are delivered from the assembly plant on their own wheels only in cases of shortage of automobiles or trucks to complete truck or carload units. The San Francisco-Oakland metropolitan area consists of the cities of San Francisco, Oakland, Alameda, Albany, Berkeley, Burlingame, Colma, Emeryville, Hayward, Mill Valley, Richmond, San Bruno, San Leandro and San Rafael (all within 20 miles from Melrose). From January 1, 1937, to July 31, 1937, 675 vehicles were delivered from the assembly plant on their own wheel to consignees outside of such metropolitan district. All other deliveries during such period made outside such metropolitan district were made by rail, boat or truck. Such period is a typical seven months period. All such vehicles so driven on their own wheels were driven by a full-time employee of the Auto Transportation Division of the Pacific Motor Trucking Company.

"That all 'drive away' deliveries were and are made in single-car or two-car lots, each vehicle being individually driven; that such 'drive away' deliveries were and are never made by grouping three or more cars in a train or fleet; that whenever it is necessary

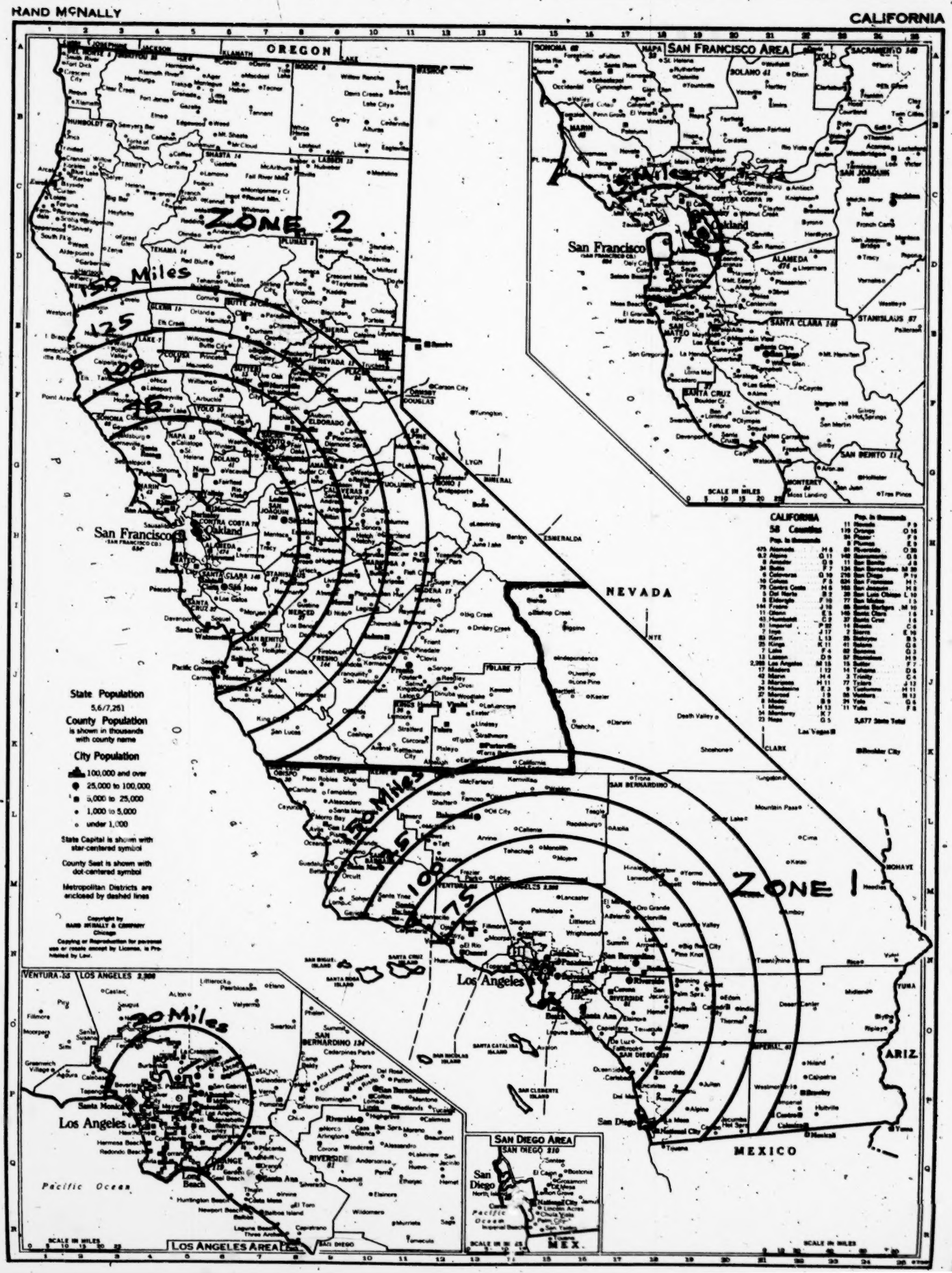
to make deliveries of three or more vehicles to the same consignee or group of consignees, such delivery is made by transporting said vehicles upon trucks; that there is and has been no fleet movement of new cars upon the public highways in California from said assembly plant." [R. 128, 129.]

Attached to such affidavit is an itemized list showing the destinations of all of the 675 vehicles so delivered on their own wheels to consignees outside such metropolitan area [R. 129]. Seven of these were delivered to Douglas, Arizona, and were therefore subject to the act. The following is an analysis of such list, showing the distances the other 668 vehicles were driven:

Number of cars	Distance From Plant to Destination	Per Cent of Total
516	Less than 75 miles	77 plus
107	75 to 100 miles	16 plus
34	100 to 125 miles	5 plus
1	125 to 150 miles	0.15
10	over 100 miles	1.5 plus
668		

(Map)

The map opposite this page shows the two zones into which the state is divided, by the heavy black line which divides the state into north and south halves. In the upper right-hand corner a circle with a radius of fifteen miles encloses the cities which constitute the San Francisco-Oakland metropolitan area, as above described in the Cron affidavit. The itemized list attached to the Cron affidavit and the above table are further explained in that


RAND McNALLY
CALIFORNIA
OREGON
NEVADA
ARIZ
MEXICO
ZONE 2
ZONE 1
150 Miles
125
100
75
50
30 Miles
San Francisco
Oakland
Los Angeles
San Diego
SAN FRANCISCO AREA
LOS ANGELES AREA
SAN DIEGO AREA
Pacific Ocean
State Population
5,6/7,251
County Population
is shown in thousands
with county name
City Population
100,000 and over
25,000 to 100,000
5,000 to 25,000
1,000 to 5,000
under 1,000
State Capital is shown with star-centered symbol
County Seat is shown with dot-centered symbol
Metropolitan Districts are enclosed by dashed lines
CALIFORNIA
58 Counties
5,577 State Total
SCALE IN MILES

part of the map comprising Zone 2 by the circles which have San Francisco as their center and which show distances of 75, 100, 125 and 150 miles from San Francisco, these being the distances used in the foregoing table. San Francisco is used, conservatively, as the center of the metropolitan area.

W. J. Holm, head of the traffic division of the Long Beach, California, branch of the Ford Motor Company, described in his affidavit [R. 121] the transportation of Ford cars and trucks from such plant. All authorized Ford dealers in Arizona, Southern California, and certain points in Nevada and Mexico receive the vehicles which they distribute from such plant except occasional carloads from other assembly plants. Attached to his affidavit is a detailed statement showing the destinations of all vehicles, 130, driven from such plant on their own wheels during April and May, 1937. All other vehicles delivered during that period were moved by truck, rail or boat. This statement represents a typical period of operation of such plant. Each of the vehicles driven away was moved singly, practically all being driven by a full-time employee of the dealer taking delivery, not to exceed 3 per cent being delivered directly to the purchaser. Not more than two vehicles are ever driven away together, and each of these is in charge of a separate driver.

An examination of this detailed statement [R. 122] shows that of the 130 drive-away vehicles, 13 went to Arizona and Nevada and were therefore subject to the act. The following table is an analysis of the distances the remaining 117 cars were moved:

Number of Cars	Distance From Plant to Destination	Per Cent of Total
81	Less than 75 miles	69.2
10	75 to 100 miles	8.5
9	100 to 125 miles	7.7
4	125 to 150 miles	3.4
13	over 150 miles	11.2
117		

Mr. Holm's detailed statement and the above table are further explained by the map opposite page ..... hereof. In Zone 1 circles are drawn, with Long Beach as the center, to show distances of 75, 100, 125 and 150 miles, these being the distances used in the foregoing table.

The intrazone movement of vehicles is also described in the affidavit of Roy S. Busby, traffic manager, Southern California Division of General Motors Corporation, South Gate, California (near Los Angeles), which assembles new Buick, Oldsmobile and Pontiac cars [R. 126]. All authorized dealers in such cars in California, Arizona, Idaho, Nevada, Oregon, Utah and Washington receive all of their cars from such plant or from the factories in Michigan. He describes what he terms the "Metropolitan Area" of Los Angeles County, and the area so described is shown in the lower left-hand corner of the map enclosed by a circle with a radius of twenty miles, with Los Angeles as the center.

Deliveries in such area are usually made by driving the cars, and outside of such area by rail, boat or truck. From January 1, 1937, to June 30, 1937, 18 vehicles were delivered outside such area on their own wheels. Each of the vehicles driven away from such plant was driven

singly by a driver who is a full-time employee of the Pacific Motor Trucking Company, and no more than two of such cars were driven in one group. Such six months period is a typical period.

The affidavit of M. F. Shaw, district manager of the Pacific Motor Trucking Co. [R. 119] further explains the foregoing Busby affidavit. It describes how cars are trucked or driven away from the General Motors Southgate assembly plant. All cars driven away are driven singly by a full-time employee of the company, who is a licensed chauffeur of California, is under $500 bond, and is furnished with return transportation. An analysis of the schedule attached to the Shaw affidavit shows that most of the drive-away deliveries were made less than 20 miles from the assembly plant. Out of the 10,595 cars delivered from such plant on their wheels from January 1 to June 30, 1937, only 18 were delivered a distance of more than 20 miles from the plant, as follows:

Number of Cars	Destination	Miles From Assembly Plant
2	Banning	80
1	Bishop	240
5	Hemet	70
1	Lancaster	55
3	Mohave	80
5	Oceanside	65
1	Red Mountain	100
Total 18		

That is what Mr. Busby meant in his affidavit that 18 cars were delivered outside the metropolitan area of Los Angeles from the assembly plant from January 1, 1937, to June 30, 1937.

In regard to the drive-away deliveries from the Chrysler Motor assembly plant in Maywood, California (contiguous to Los Angeles), the affidavit of J. M. Hunt, supervisor of planning and traffic at the plant, discloses [R. 149]:

> "* * * that all deliveries from said plant to dealers within the metropolitan area of Los Angeles County are made as 'drive-away' deliveries; that outside of said metropolitan area deliveries from said plant are usually made on trucks, by rail, by boat, or other method of conveyance other than by being driven on their own wheels; that on some occasions, however, 'drive-away' deliveries of trucks, and very rarely of passenger vehicles, are made to points outside said area; that during the period from January 1, 1937, to July 31, 1937, such deliveries outside of said metropolitan area did not exceed two hundred (200) vehicles, which deliveries were usually made in units of one or two vehicles, although on some occasions units of three or four vehicles were delivered; that except on rare occasions all deliveries now made outside of said metropolitan area are made on truck or other method than as 'drive-away' deliveries; that 'drive-away' deliveries to points outside said area have been discontinued except in emergency instances."

Here, again, the difference in the method of making such deliveries from that employed in ordinary caravaning operations from outside of the State of California is brought out by the statement in such affidavit:

> "That each vehicle delivered by said 'drive-away' method was and is driven by an employee of the single contract carrier who conducts all of the 'drive-away' delivery operations of said assembly plant, except that on rare occasions such 'drive-away' de-

liveries were and are made either by the retail purchaser taking delivery at the factory, or by the dealer or distributor or his employee, taking delivery at the factory." [R. 150.]

In regard to this same assembly plant, the witness Frank B. Murchison, called by the plaintiffs, testified that he was the carrier who handled all of the deliveries from said Chrysler factory. He stated that they deliver by the drive-away method from such plant approximately 1500 to 1700 automobiles per month. These cars, he stated, were moved in groups of two or three or four, but each car was driven by a separate driver. These drivers are permanently employed by such carrier and each is a licensed chauffeur in the State of California [R. 77-79]. It is evident, in connection with the testmony of this witness, that of these 1500 to 1700 vehicles per month which he stated were the number of deliveries made by driving the vehicles on their own wheels, practically all of them were within the metropolitan area in Los Angeles County, as is disclosed by the aforesaid affidavit of the traffic manager of the Chrysler plant. Here again, then, there would be no occasion or tendency to drive such cars in *fleets*.

This witness, Murchison, also gave certain testimony with regard to the quantity of "truck away" operations conducted by him for the Chrysler assembly plant [R. 77-78]. He stated that they "truck away" deliver "a little less" than they drive away for delivery, "possibly 1500 or 1600" [R. 77-78]. The difference in method of this type of delivery from the method of caravaning cars into the State of California for the purpose of sale is self-evident. In this regard, however, it should not be overlooked that such operations by one in the business

of hauling property for hire already have been subjected to what the Legislature has determined is a proper fee for that use of the highways, in addition to having paid the extra registration and license fee based upon the weight and size of the vehicle, as provided by the Vehicle Code.

Appellees also produced a witness, Charles E. Miske, who testified [R. 79] that he was manager of a company engaged in the business of driving new White, Reo, Mack and International trucks for the purpose of sale. His testimony was to the effect that they delivered on the average of 25 trucks per month in zone number 1 and 250 or 300 per month from San Francisco, which is Zone 2. It is not disclosed, however, what portion, if any, of such deliveries is made to points which are considerably distant from the point of origin of the transportation. Furthermore, the drivers of said trucks were all licensed drivers, regularly employed, and the deliveries were usually made singly [R. 79, 80].

In addition to the foregoing testimony in regard to transportation of motor vehicles upon the highways on their own wheels for the purpose of sale within a single zone in the State of California, it was stipulated that approximately 250 cars per month were so delivered from the Studebaker assembly plant in Maywood, California (near Los Angeles), to points within a radius of 30 miles of said plant, the drivers of said cars being registered licensed drivers in California and the cars being moved in units of one in charge of a single driver [R. 80].

It was further stipulated that on an average of 100 new International trucks per month are transported over the highways in Zone 1 on their own power, 30 per cent

of said trucks moving in units of two, 50 of said 100 having been previously moved on the highways from San Pedro to Los Angeles, a distance of approximately 20 miles, in units of two. Seventy per cent of said 100, which are ultimately delivered for sale, are delivered within said metropolitan area of Los Angeles County. It is not shown where or how the balance of said trucks are delivered [R. 81].

Substantially the same evidence as to the intrazone movement of automobiles is supplied as to the distribution of De Soto and Plymouth cars in Northern California [Peabody affidavit, R. 127]; as to the distribution of Chrysler and Plymouth cars in Northern California [Alexander affidavit, R. 131]; as to the distribution of Hudson automobiles in Northern California [Stater affidavit, R. 133]; as to the distribution of Dodge and Plymouth cars in Northern California [Ehlers affidavit, R. 135]; and as to the distribution of Cadillac and La Salle cars in Northern California [Adams affidavit, R. 147].

(d) The Validity of the Classification Between the Interstate and Interzone Movements, on the One Hand, and the Intrazone Movements on the Other, Under the Evidence, Is Established by the Decisions of This Court.

The decisions of this Court recognize the necessity and validity of zoning provisions and exemptions in motor vehicle tax and regulatory laws, and the propriety of distinguishing between ordinary and unusual use of the highways, between long and short hauls by motor vehicles, and between fleet and nonfleet operations.

See:

Continental Baking Co. v. Woodring, 286 U. S. 352;

Sproles v. Binford, 286 U. S. 374;

Hicklin v. Coney, 290 U. S. 169;

Aero Mayflower Transit Co. v. Georgia Public Service Commission, 295 U. S. 285.

In *Continental Baking Co. v. Woodring, supra*, there was involved a classification for purpose of taxation and regulation of those who (like appellees) were "engaged in the transportation by motor vehicle of property sold or to be sold by him in furtherance of any private commercial enterprise" (286 U. S. at 357, note 1-(d)). The act was attacked as violative of the commerce clause and the Fourteenth Amendment on the ground, among others, that certain exemptions rendered the act discriminatory.

One exemption was of those who have an established place of business or base of operations within a city or village and operate within a radius of twenty-five miles beyond the municipal limits. In holding this valid the Court said (pp. 370-371):

> "We think that the Legislature could properly take these distinctions into account and that there was a reasonable basis for differentiation with respect to that class of operations. In this view, the question is simply whether the fixing of the radius at twenty-five miles is so entirely arbitrary as to be unconstitutional. It is obvious that the Legislature, in setting up such a zone, would have to draw the line somewhere and, unquestionably, it had a broad discretion as to where the line should be drawn. In exercising

that discretion the Legislature was not bound to resort to close distinctions or to attempt to define the particular differentiations as to traffic conditions in territory bordering on its various municipalities."

The act was further attacked because it exempted from the classification "the transportation of livestock and farm products to market by the owner thereof or supplies for his own use in his own motor vehicle" (286 U. S. at 371). It should be kept in mind that Continental Baking Co. was engaged in interstate commerce, transporting its own property to market in its own vehicles. The exemption favored those doing precisely the same thing, many of them obviously engaged solely in intrastate commerce. This Court recognized, however, that the true basis of the classification was not between those engaged in interstate and those engaged in intrastate commerce, but was, as is true in the instant case, between those conducting, habitually, a burdensome motor vehicle traffic and those making an ordinary use of the highways. On this the Court said (286 U. S. at 373):

> "The (District) Court found a practical difference between the case of appellants 'who operate fleets of trucks in the conduct of their business and who use the highways daily in the delivery of their products to customers' and that of 'a farmer who hauls his wheat or livestock to town once or twice a year'. *The Legislature, in making its classification, was entitled to consider frequency and character of use and to adapt its regulations to the classes of operations, which, by reason of their habitual and constant use of the highways, brought about the conditions making regulation imperative and created the necessity for the imposition of a tax for maintenance and construction.*" (Italics supplied.)

In *Sproles v. Binford,* 286 U. S. 374, there were motor vehicle length and load limitations, with exemption to vehicles operated "between points of origin, or destination, and 'common carrier receiving or loading', or unloading points" (286 U. S. at 393). This was plainly a zoning provision, with a zone of indefinite size. The exemption was sustained because relating to shorter hauls than made by the included class and because "those who come within the exception transport under distinctly different circumstances from other persons using the highways" (p. 394).

Now this, again, was a classification between interstate and intrastate commerce; the general limitations applied to vehicles employed in interstate operations (pp. 389-390), while the exception necessarily was confined to traffic conducted within the areas defined, most of which areas, perhaps all, necessarily would lie entirely within the boundaries of the state (pp. 394-395). But this Court recognized that the classification was not actually between interstate and intrastate commerce, that the effect on interstate commerce was "merely an incident" (289 U. S. at p. 95), and that the justifiable basis of the classification was the difference between two forms of vehicular traffic.

These principles are applied in *Hicklin v. Coney, supra,* and *Aero Mayflower Transit Co. v. Georgia Public Service Comm., supra.*

In *New Mexico ex rel. McLean v. Denver & Rio Grande R. R. Co.,* 203 U. S. 38, a statute was sustained which distinguished between interstate and intrastate commerce, putting a license fee on the former. The Court said (p. 54):

> "But legislation is not void because it meets the exigencies of a particular situation."

(e) THE CLASSIFICATION IS NOT INVALID BECAUSE MANY SINGLE MOTOR VEHICLES ARE OPERATED UPON THE HIGHWAYS FOR ALL PURPOSES, NOR BECAUSE MANY VEHICLES COME INTO THE STATE ANNUALLY FOR OTHER PURPOSES THAN FOR SALE AND ARE NOT SUBJECT TO THE ACT, NOR BECAUSE SOME VEHICLES NOT IN FLEETS MAY BE SUBJECT TO THE ACT.

The District Court in its opinion [R. 39-40] and in findings of fact Nos. VI, XII, and XIII [R. 63-65], apparently held the classification invalid or unwarranted because a large number of motor vehicles are registered in California and a large number of foreign registered vehicles come into the state each year, compared with which the number of vehicles subject to the act is small; and because some vehicles subject to the act are operated not in hook-ups and not in fleets.

In emphasizing these points the Court ignored or overlooked two decisive and related factors: (1) that all of the appellees move their vehicles in integrated fleets of 19 to 25 vehicles, and (2) that in *Morf v. Bingaman*, 298 U. S. 407, this Court said in sustaining the classification, made by the practical operation of a statute, of those moving vehicles in fleets:

> "* * * it is shown affirmatively that the cars transported for sale by appellant move in caravans. The classification of the statute thus, in its practical operation, embraces and is constitutionally applicable to cars moving in caravans, the class of traffic in which the appellant engages and on which he is alone taxed. * * * Discrimination, if any, is between those who drive their cars to market singly and others who drive them for other purposes, and may be sub-

jected to a different tax. Appellant does not assert that he belongs to either class. As the traffic in which he participates is properly taxed, he cannot complain of the imposition of the tax on a business which he does not do."

We do not overlook the possible claim that appellees move some of their cars singly, not in hook-ups and not in caravans. But we submit that the evidence cannot possibly be construed to support such a claim, even by inference. As has been pointed out above, one of the appellees, Al Asher, testified as to the manner of movement of his vehicles in integrated caravans of 19 to 25 cars, with two men in charge, one in front and the other in the rear [R. 105], and it was stipulated that the other plaintiffs would testify substantially as Mr. Asher testified. [R. 107.]

If we refer to the colloquy between the Court and counsel at pages 72-75, Record, and to the testimony of appellees' witness, Manford [R. 75], there is nothing in that which shows any attempt by appellees to make such facts as were therein adduced applicable to the particular caravaning operations conducted by appellees. Such facts were in plain and unambiguous terms made to apply only to the general statistics of the caravan traffic and not to any appellee or to the appellees in general. Appellees throughout the record showed no intention at any time to claim that they moved their vehicles in any other way than in caravans. The reason for this is apparent; they bring their vehicles from Detroit or other points in the middle

west, employ one-trip drivers obtained by want-ads, and therefore obviously follow the general caravan practice testified to by Mr. Asher.

Furthermore, it seems apparent that the attempted stipulation which was the subject of the discussion between court and counsel at pages 72-75, Record, was withdrawn by counsel for appellees [R. 74-75], and instead counsel called his witness, Manford, whose testimony was in some respects different from the withdrawn stipulation. Manford testified that at the Yermo No. 8 station of the Department of Motor Vehicles, where he is now stationed, more cars subject to the caravan act come through singly, not in hook-ups and not in convoys, than at any other stations; that 20 to 25 per cent of the cars subject to the act coming through his station are such singles, and the rest are in hook-ups and in convoys with other cars. [R. 76.] This is the only evidence on that point, was general only, did not relate to any of the appellees, and the appellees made no attempt whatsoever to show that it was in any way or degree applicable to their operations. They were content to identify their operations only with the 19 to 25 vehicles caravan operation testified to by Mr. Asher.

However, we proceed in the next division hereof to submit that the act is valid as to the entire volume of the traffic included, both as to singly operated vehicles and as to fleets.

II.

The Entire Volume of the Traffic Within the Act Is Properly Included, and That Not Within Is Properly Excluded. The Practical Classification of This Traffic Made by This Act Is Similar to That Made by Statutes or Administrative Rulings in Many Other States With Respect to Similar Traffic.

A Distinguishing and Common Attribute of This Traffic Is the Caravan or Fleet Movement of a Large Proportion of the Vehicles, and the Operation of Two Vehicle Hook-ups, but the Entire Volume of Traffic Including the Vehicles Moved Singly Is of Such a Character as to Justify Including the Entire Traffic in One Legislative Classification.

The Description of the Class Includes Only Those Who Actually Do Move Vehicles in Caravans, and Includes All Such, and of the Total Volume of the Vehicles Moved by Such Persons Eighty Per Cent Is Moved in Caravans.

STATE AND FEDERAL CLASSIFICATION OF THIS TRAFFIC.

Many states, and the Interstate Commerce Commission in the administration of the Motor Carrier Act, 1935, 49 U. S. C. A. 301-327, now classify the caravan movement as a distinct type of highway traffic, and when conducted for hire as the transportation of property for compensation. The state regulation and taxation have been accomplishd by the enactment of specific statutes or by administrative rulings that existing statutes are applicable.

In the following states statutes have been enacted for the specific purpose of regulating and taxing the move-

ment of motor vehicles on their own wheels for purpose of sale.

Arkansas, Act 183 of the General Assembly, 1935, as amended.

Idaho, 2nd Extra. Ses. L., 1935, ch. 2 (sustained in *Wallace v. Pfost,* 57 Idaho 279, 65 Pac. (2d) 725), 110 A. L. R. 622).

Nebraska, Secs. 60-801 and 60-302, 1937, Cum. Supp. to Compiled Statutes (sustained in U. S. Dist. Ct. of Nebraska in *Kenosha Auto Transport Co. v. Cochran* on March 1, 1938).

Nevada, 1935 Stat., p. 261, ch. 126, secs. 1, 2(g), 10(3) and (4).

New Mexico, Session Laws of 1935, ch. 56 (sustained in *Morf v. Bingaman,* 298 U. S. 407).

Oklahoma, Session Laws of 1935, ch. 50, art. 5, secs. 4 and 5.

Texas, Acts of 1935, 44th Legislature, p. 800, ch. 342, sec. 1.

Utah, Laws of 1935, p. 90, ch. 46, secs. 90-96, 138.

Washington, Remington's Rev. Stat., secs. 6382-60 to 6382-70.

Wyoming, Secs. 1(r), 15, 16, 17 and 21 of Ch. 65, Ses. Laws of 1935, as amended by Ch. 121, Ses. Laws of 1937.

In the following states previously existing statutes have been construed to regulate and tax the caravan movement. Specific rulings to this effect have been made by administrative agencies.

Arizona, Attorney General's Opinion of July 1, 1935.

Colorado, Public Utilities Commission 1938 Rules, Common Carrier rule 26, Commercial Carrier rule 6, Private Carrier rule 26.

Kansas, Kansas Corporation Commission ruling of September 17, 1935.

Missouri, Public Service Commission Rule No. 24-A of General Order No. 33-A, dated Sept. 17, 1938.

Montana, Attorney General Opinions, Vol. 16—No. 168, p. 172; No. 375, p. 368.

North Dakota, Board of Railroad Commissioners' construction of chapter 162, Session Laws of 1933.

Oregon, Public Utilities Commissioner's construction of Sec. 55-1357, Oregon Compiled 1935 Supp.

The Interstate Commerce Commission holds that the movement of motor vehicles on their own wheels for purpose of sale, for hire, is transportation of property for hire and is therefore subject to the Motor Carrier Act, 1935, Title 49 U. S. C. A., Secs. 301 to 327. This position was first taken in Administrative Ruling No. 33 of the Bureau of Motor Carriers of the Interstate Commerce Commission on October 16, 1936, as follows:

Question: Is the delivery of automobiles under their own power, for compensation, in interstate commerce such a transportation of property by motor vehicle as to come within the provisions of the Motor Carrier Act, 1935?

Answer: The interstate transportation of automobiles by the so-called "caravan method", if conducted for compensation by individuals or organizations holding themselves out to perform such a driving service, as a business and not as casual, occasional, or reciprocal transportation, is transportation of property by motor vehicle and is subject to the Motor Carrier

Act, 1935. It makes no difference whether some of such vehicles are towed by other vehicles or whether all operate on their own power.

Since that date the Bureau of Motor Carriers has administered the Act in conformity with this ruling, and this position was sustained by Division 5 of the Interstate Commerce Commssion in John P. Fleming Common Carrier Application, No. MC-48654, ... M. C. C. ....., on September 19, 1938, where it is said:

> "Applicant's operations were conducted on June 1, 1935, solely by the driveaway or caravaning method of transporting motor vehicles. By this method, the transportation is performed by (1) individual driving of the vehicle under its own power; (2) driving one vehicle under its own power and towing a second vehicle attached to the first by a mechanical device generally called a tow-bar; (3) by bolster mount or full mount which consists of driving one vehicle under its own power and upon which another vehicle is partially (front wheels) or wholly mounted, or combinations of both.
>
> These methods of conveying the traffic suggest the desirability of a brief discussion of whether the transportation performed is within the jurisdiction conferred upon us by the Act. As indicated below, no question appears to exist so far as towing of a vehicle is concerned. The dictionary definition[2], in a limited sense, however, leaves the impression that 'transportation' may be something other than the movement of

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[2]Act of transporting, or state of being transported; carriage; removal; conveyance—Webster's New International Dictionary. Under the definition of "convey", this authority asserts that the synonym "transport" implies an actual carrying, as by vehicle or vessel.

an automotive vehicle under its own power. Corpus Juris defines 'transporting' as follows:

> As commonly understood, one is transporting an article when he is conveying it from one place to another. Transporting includes towing.

In their interpretation of federal statutes making transportation of a stolen motor vehicle, in interstate commerce, a criminal offense, the courts have uniformly held in sustaining convictions that driving of the vehicle under its own power is transportation. See *Whitaker v. Hitt,* 285 F. 797, *Hostetter v. United States,* 16 F. (2d) 921, and *Piper v. Bingamen,* 12 F. Supp. 755. We conclude that the methods followed by applicant in conveying the vehicles from one place to another constitute transportation within the meaning of the act. It makes no difference whether certain vehicles are towed by other vehicles or whether all operate on their own power.

Under part I, we have consistently regarded the movement over other than the owning railroad of locomotives under their own power as transportation. Tariff rates for such transportation are provided by rail carriers, and in certain instances we have approved a basis of rates therefor. See *Investigation, and Suspension Docket No. 23,* 21, I. C. C. 103, and *Locomotives from and to the South,* 211 I. C. C. 114."

With two exceptions, all of the state statutes and administrative rulings define the regulated traffic as the movement of motor vehicles on their own wheels for the purpose of sale. Nebraska imposes a fee of ten dollars upon the towing of one vehicle by another except in emergency (Sec. 60-801, 1937 Cum. Supp. to Compiled Statutes) and requires any vehicle moved for the purpose of sale whether under its own power or towed to have a regular

Nebraska license plate (Sec. 60-302, 1937 Cum. Supp.). The Missouri ruling is restricted to caravaning for hire by common carriers.

No statute or administrative ruling attempts to define the included traffic as the operation of vehicles in caravans or fleets, and the Nebraska statute is the only one which imposes a special fee upon the hook-up towing operation.

The evidence establishes that of the vehicles subject to the act which come into the state from without at least eighty per cent are in caravans or fleets [Manford testimony, R. 75-76; attempted stipulations if considered, R. 72-75]. Of this eighty per cent, all [R. 76] or not less than half [R. 72-75] are in two-car hook-ups. So of this traffic not more than twenty per cent is composed of vehicles driven singly, not in caravans and not in towing hook-ups.

As has been pointed out above, this evidence is all of a general nature, and wnile it was adduced by appellees they plainly kept it in genral terms and made no attempt to show that it was applicable to their traffic. But on the other hand the specific description of appellees' traffic is wholly confined to the description of his operations made by appellee Asher [R. 105-107], an integrated fleet movement of 19 to 25 cars, which by stipulation is made applicable to all other appellees [R. 107]. Therefore, appellees cannot take advantage of the discrimination (if any) made by the act against the operators of the single cars.

Morf v. Bingaman, 298 U. S. 407.

However, we desire at this time to submit that the evidence justifies the classification made in the act as to any and all types of the included traffic.

The feature which most distinguishes this from any other highway traffic is the operation of fleets, commonly called caravans. This is such a marked characteristic that the term "caravaning" has in a few years become the standard descriptive term to denote the movement of motor vehicles on their own wheels for purpose of sale, whether such motor vehicles be operated singly and not in company with any other vehicles, whether in two-car hook-ups, or whether in actual caravans or fleets. See annotation in 110 A. L. R. 622. Note that the Bureau of Motor Carriers Administrative Ruling No. 33, heretofore set out, describes this traffic as the "caravan method". Observe that the Interstate Commerce Commission in the *Fleming Application, supra,* describes applicant's business as "the drive-away or caravaning method of transporting motor vehicles". *This is no accident or misdescription; the traffic is simply described in terms of the element which is its most outstanding attribute, the actual caravan or fleet movement.*

The reasons which have led to the movement of vehicles intended for sale in caravans have been heretofore discussed, and are fully described in the Ingels [R. 113] and Bates [R. 153] affidavits. It has been found to be the most practicable way of moving a large number of cars a long distance on the highway, particularly where, as in the operations of the appellees, the vehicles are driven by one-trip drivers obtained by want-ads and it is considered desirable to keep all the vehicles constantly under the supervision of the caravan manager. As this Court said in *Morf v. Bingaman,* 298 U. S. 407: *"Here it is the practice of transporting automobiles over the highways for purpose of sale which has given rise to the practice of moving them in caravans."* (Italics supplied.)

The legislatures of various states were confronted with the problem of this traffic. In enacting legislation to regulate and tax the traffic of course the first problem was to describe adequately the included class. Only two possible descriptions were available, either the description of the class as the movement in caravans or the description that has actually been adopted in all of the above named states, the movement for purpose of sale. A statute describing the class as the movement in caravans would have been impossible of enforcement, and probably invalid because of vagueness. Obviously the description of the class by their occupation, the movement of vehicles for sale, was far simpler as to the drafting of the statute and as to enforcement of the statute when enacted.

And now giving to appellees every imaginable inference they can claim from the record, this description includes within its scope only those who actually do move motor vehicles in caravans, and includes all such, and of the total volume of the vehicles moved by such persons eighty per cent is moved in caravans; that consideration alone should justify the description of the class which the legislature adopted.

There is ample precedent for the action of the California and other legislatures in adopting the descriptions of the class which they did. The class may be defined by describing "those from whom the evil mainly is to be feared", *Patsone v. Pennsylvania,* 232 U. S. 138, 144; and a classification having some reasonable basis is not invalid *"because in practice it results in some inequality," Lindsley v. Natural Carbonic Gas Co.,* 220 U. S. 61, 78, nor "even though it may bear hard in some particular case," *Bain Peanut Co. v. Pinson,* 282 U. S. 499, 501.

The practice of moving automobiles long distances for purpose of sale gave rise to the practice of moving them in caravans in which many of the cars are in tandem hook-ups. Appellees conduct their business in that way, as do all others similarly engaged. The evidence shows the advantage of that method of conducting the business. If vehicles are to be driven long distances or across several states by drivers variously, often casually, procured, it is obviously advantageous to have such vehicles accompanied by and in charge of a manager and a mechanic. So the cars are dispatched in caravans of a size which makes it economically sound to have them accompanied by a manager and by a mechanic to see that they promptly and safely arrive at destination.

It was this practice that produced the evils and difficulties shown in the evidence and which induced the enactment of the Caravan Law. The legislature was confronted with a practical problem, one part of which was the description of the class. *As it was the practice of moving cars long distances on their own wheels for purpose of sale which gave rise to the practice of caravaning and its attendant evils, so the legislature described the class in the terms of the practice which created the evils and induced the law.*

The difficulties which the legislature and enforcing officials would have encountered had the legislature attempted to define the class as those who moved vehicles in caravans are evident. The enforcing officers would have been confronted with the easy evasion of stringing caravans out with a mile or so between cars upon approaching the border station and entering the state, and then closing up into standard caravan formation after getting into the

state and out of sight of the border station. True, traffic officers in the interior of the state would have caught some of the evaders, but many would escape. The difficulties are obvious.

The question of the practical utility and constitutionality of such a classification also would arise. The difficulty would not be the classification between caravan and non-caravan movement, but rather the vagueness and workability of the classification. That is, when is a caravan not a caravan: what distance, or lack of distance, between cars determines whether they are in caravan, and how many cars how close together make a caravan? That again suggests insurmountable difficulties of law drafting, and of action and interpretation facing enforcement officials. If a caravan were defined in terms of distance between cars, how easy it would be, accordionlike, to expand and contract in length according to the proximity of enforcing stations and officers.

Clearly the definition of the class used by the legislature was the logical and workable one. If a common practice creates well defined difficulties which call for legislative action, what better way to define the class than to include those following such practice and none others?

Central Lumber Co. v. South Dakota, 226 U. S. 157;

Patsone v. Pennsylvania, 232 U. S. 138.

Now as those engaged in the practice must be classified in terms of the practice because of the necessity of drafting a workable statute, they cannot complain because the class sometimes includes variations or departures by them from the particular practice at which the statute is aimed,

where such variations and departures are so closely related to the practice as to be within the definition of the class, or are, in truth, an integral part of the practice. That is, one who moves eighty per cent of his vehicles in caravans cannot complain because a statute, defining the class in terms of the practice that induced the caravan operation, includes and taxes and regulates the twenty per cent of the cars he moves singly. It is well settled that a legislature faced with the practical problem of defining the boundaries of a classification may include reasonable margins to avoid vagueness and insure workableness and effective enforcement.

Applicable here is the doctrine, invoked in varied situations, of *Purity Extract & Tonic Co. v. Lynch*, 226 U. S. 192. A law forbidding the sale of intoxicating liquors also forbade the sale of non-alcoholic malt liquors. It was held that the inclusion of the nonintoxicating malt liquors in the prohibition was sustainable as a means of preventing evasions of a law actually aimed at intoxicants. On the question this Court made an oft repeated statement (at page 201):

> "It does not follow that because a transaction, separately considered, is innocuous, it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the government. * * * The statute establishes its own category. The question in this Court is whether the legislature had power to establish it. The existence of this power, as the authorities we have cited abundantly demonstrate, is not to be denied simply because some innocent articles or transactions may be found within the prescribed class."

Likewise in *Euclid v. Ambler Realty Co.*, 272 U. S. 365, this Court said (at page 388):

> "Here, however, the exclusion is in general terms of all industrial establishments, and it may thereby happen that not only offensive or dangerous industries will be excluded, but those which are neither offensive or dangerous will share the same fate. But this is no more than happens in respect of many practice-forbidding laws which this Court has upheld, although drawn in general terms so as to include individual cases which may turn out to be innocuous in themselves (citing cases). *The inclusion of a reasonable margin to insure effective enforcement will not put upon a law, otherwise valid, the stamp of invalidity.* Such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation." (Italics supplied.)

Equally in point on other aspects of the rule above stated are *New York v. Hesterberg*, 211 U. S. 31; *Hebe Co. v. Shaw*, 248 U. S. 297; *Pierce Oil Corp. v. Hope*, 248 U. S. 498.

It is therefore submitted that this statute is valid as to every person within its scope because (a) it excludes the intrastate traffic which is all a single car, non-caravan movement over short distances, with professional, full-time chauffeurs (b) it includes the entire movement of vehicles in caravans; and (c) the inclusion of single cars which are not more than twenty per cent of the entire number of cars does not invalidate the act since the owners of such single cars are also the operators of the eighty per cent moved in caravans.

III.

The Fees Required Are Not Excessive.

The statute [Appendix A, p. 74 hereof] in effect requires two separate fees, each of which is exacted as a condition precedent to the use of the highways of the state for the purpose of caravaning. First, there is a fee of $7.50 "to reimburse the State for expense incurred in administering police regulations pertaining to the operation of vehicles moved pursuant to such permits and to public safety upon the highways as affected by such operation." (Section 4.) Section 7 provides for the collection of the fees by the Motor Vehicle Department, and provides for such $7.50 fee to be paid into the Motor Vehicle fund in the State Treasury "to reimburse the State Treasury for the added expense which the State may incur in the collection of such fees and in the administration and enforcement of this act and the expense of policing the highways over which such caravaning may be conducted."

Second, there is a $7.50 fee "as compensation for the privilege of using the public highways of this State." (Sec. 4.) This fee is likewise collected by the Motor Vehicle Department, but is payable into the State highway fund "as compensation for the privilege of using the highways of this State." (Sec. 7.) The State highway fund is reserved for moneys for the acquisition of rights of way and the construction, maintenance and improvement of State highways. (Cal. Stats. 1935, Ch. 29, secs. 182, 183.)

We will refer first to those costs which must be charged against the first of these $7.50 fees. Preliminarily, however, we wish to emphasize that the burden rests on the plaintiffs to show that the fee is excessive for the declared purpose. (*Ingels v. Morf*, 300 U. S. 290.)

In that case the court held that the $15.00 fee prescribed in the 1935 Act was excessive for the purpose of policing and collection. In so holding, reference was made to certain evidence as to the costs involved. Therefore, solely in order to rebut any possible inference that such evidence as to costs was complete and, therefore, controlling in this case, and *not* in order to assume any burden of affirmatively showing that the present $7.50 fee for the purpose in question is reasonable, appellants have produced evidence to show that there are additinal costs which must properly be considered in determining the reasonableness of the present fee. We mention this to avoid any misunderstanding as to the reasons for going forward with the proof as to the costs involved in the $7.50 fee for policing and collection, while *not* having done so as to the costs involved in the $7.50 fee (to be considered hereinbelow) for the use of the highways.

Captain Personius, who was charged with the supervision of the caravan law in zone 2, the northern zone in the State of California [R. 81], testified generally with regard to certain of the costs of policing the highways and administering the Act. He pointed out that the duties of Supervising Inspector Bly were divided by Chief Cato, and one-half of his salary, or $150.00 per month, was apportioned to the enforcement of the Caravan Act. [R. 83.] This witness further testified that he himself devoted his full time to the enforcement of said statute, at a salary of $240.00 per month. He further testified that there were one additional district officer at $215.00 per month and three district officers at $200.00 per month, two of whom worked under Inspector Greer in Los Angeles and the other two under the witness in Sacramento, the latter two devoting their full time to the enforcement of

the caravan statute. [R. 84.] Inspector Greer, in charge of enforcement of the Caravan Act in the southern district, testified that he devoted approximately 50% of his time to his duties in connection with the administration of said Act. [R. 101.] His salary is not disclosed, but it seems reasonable to assume that it is not less than that of Captain Personius, or $240.00 per month.

Captain Personius further testified that at a conference between the Director of Vehicles, the Chief of the Highway Patrol, and himself, and another party, it was decided that thirty men were needed to handle the traffic by reason of the caravans. These men were sent to the highway patrol school and then were assigned to steady work on September 17, 1937. These particular men were not themselves assigned directly to caravan work but were assigned to replace men in various counties from which they had previously been taken for caravan work. [R. 85, 93.] This is clarified by the affidavit of E. Raymond Cato, Chief of the California Highway Patrol, who points out that the men who were actually assigned to the highways on which caravaning was most prevalent, were so assigned at various times through 1935, 1936 and 1937. [R. 157, 160, 163.]

Repeating the testimony which he gave at the hearing in the case of *Morf v. Ingels,* involving the constitutionality of the 1935 Caravan Act, Chief Cato states that in January or February, 1935, he appointed ten additional highway patrolmen who were assigned to highways over which caravaning most frequently occurred, and later, that same year, appointed four more. In addition to the foregoing testimony, Chief Cato has testified in the present case that in 1936 five more officers were assigned to highways where caravaning was most prevalent and where

there was the greatest increase in traffic, and, in 1937 fourteen additional officers were assigned to such highways. Also, Chief Cato points out that by reason of attempted evasion of the Caravan Act, by caravans operating over circuitous and unfrequented routes, it has been necessary to place patrolmen on certain highways on which it would otherwise not have been necessary to maintain such patrolmen. The number of said additional patrolmen is not specified, and it is not disputed that part of their time is devoted to general traffic enforcement, although as Chief Cato points out, it would not be necessary to maintain said patrolmen on said routes were it not for the caravans which are driven thereon. [R. 163-165.]

From the foregoing it is apparent that there is ample basis for the determination by the officers charged with the enforcement of the Caravan Act, that 30 patrolmen were needed to handle the traffic by reason of the caravans, and to enforce said Act. [R. 92, 93, 160.]

The cost of the operation of the motorcycles by these 30 officers is approximately $756.00 per month (63,000 miles at $.012 per mile. [R. 89.] Also, there is the transportation expense of $48.00 per month for Captain Personius [R. 88], and of $35.00 per month for Inspector Greer. [R. 89, 88, 102.]

In addition to the foregoing officers of the California Highway Patrol, three patrolmen have been assigned to investigate registrations suspected of caravaning into the State of California for the purposes of sale, and on which the caravan license fee was not paid. [R. 166.] These men are under the Bureau of Auto Theft and Investigation of the California Highway Patrol. [R. 161.] Presumably these officers, too, would have transportation ex-

pense of at least $25.00 per month, although there is no direct evidence in this regard.

Also, in connection with the enforcement of the Act it is shown that the following additional men have been required at the border patrol stations, which men would not have been required except for the purpose of performing their duties in assisting in the collection of the fees and in the regulation of caravaning upon the highways: Yuma, Yermo, Blythe and Daggett, two each, and one to Truckee. [R. 165-166.] Captain Personius also states that there was an additional man assigned to the station at Dunsmuir. [R. 91.] In this regard, it is further shown that all of the men at the border patrol stations devoted approximately 50% of their time to the administration of the Caravan Act. [R. 101, 87.] Fifty per cent of the salaries paid to said employees amounts to $372.50 at Daggett, $437.50 at Yermo, at least $367.50 at Fort Yuma, $425.00 at Blythe [R. 101-102], $297.50 at Dunsmuir, $234.50 at Clam Beach, and $377.50 at Truckee. [R. 87.] In connection with the collection of the fees, Chief Cato points out that there is a greater unit cost than is incident to the routine issuance of a temporary non-resident permit to ordinary non-resident traffic or the issuance of the regular resident registration certificates. [R. 166.]

It is further shown that in connection with the enforcement of the Caravan Act, printing, supplies and stationery, costing $600.00, had been furnished to the border stations under the supervision of Captain Personius. [R. 88.]

Presumably, at least as many supplies would be required by the border stations in the southern part of the state, although there is no positive showing in this regard. Similarly, the cost of supplies for other offices and persons having duties to perform under the Act is not affirmatively shown. Likewise, it is obvious that a certain portion of the plant maintenance costs of the border patrol stations would be a proper item for the legislature to consider in fixing the fee necessary to reimburse the state for its expenses under the Caravan Act, although the testimony does not show the amount of such costs. [R. 162.]

Chief Cato also points out that while no additional clerical help has been employed within the California Highway Patrol by reason of the caravaning of cars into the state "there have been two additional clerks assigned to that particular duty, that is, to the clerical work of enforcing said Caravan Act." [R. 166.]

In regard to the duties performed by the Division of Registration of the Department of Motor Vehicles, the supervisor of branch offices of said division, Mr. Ench, estimated that in the Sacramento office of said division, additional expenses of $675.75 per month were incurred in connection with the administration of the 1937 caravan statute. [R. 100.] Here again, it is reasonable to assume that there were expenses for supplies in connection with the duties performed under the Act by persons in said division, although there is no showing as to the amount thereof.

Recapitulating, then, the evidence justifies the following costs as a proper charge against the $7.50 fee assigned to the Motor Vehicle fund.

	Monthly	Annually
One-half Bly salary	$ 150.00	$ 1800.00
Personius salary	240.00	2880.00
District officers:		
One at $215.00	215.00	2580.00
Three at $200.00	600.00	7200.00
One-half Greer estimated salary	120.00	1440.00
30 patrolmen at $170.00	5100.00	61200.00
Motorcycle expense of 30 patrolmen	756.00	9072.00
Transportation expense of		
Personius	48.00	576.00
Greer	35.00	420.00
3 investigating patrolmen at $170.00	510.00	6120.00
Motorcycle expense for said 3 patrolmen	75.00	900.00
Border Stations:		
	Monthly	Annually
Daggett	372.50	4470.00
Yermo	437.50	5250.00
Yuma	367.50	4410.00
Blythe	425.00	5100.00
Dunsmuir	297.50	3570.00
Clam Beach	234.50	2814.00
Truckee	377.50	4530.00
Supplies		600.00
Division of Registration	675.75	8109.00
Annual Total		133,041.00

As has been pointed out, there are other items of expense which the legislature undoubtedly had in mind as being a proper charge against said $7.50 fee, but which items have not been established with sufficient certainty to justify their inclusion in the above recapitulation at fixed amounts. However, the court may properly take into consideration the existence of such items. In any event, the sums definitely accounted for so greatly exceed any possible income which may be derived from said fee, that it could not affect the result herein if the court did not consider the more or less uncertain additional items. For that matter, even if the court chose to disregard or depreciate many of the items set forth herein as certainly established, the result would likewise still be the same; that is, that the legislature did not fix a fee which was so greatly in excess of that which was reasonably necessary for the purposes for which the fee was imposed, as to render the imposition of said fee an unconstitutional act.

As a matter of computation for the assistance of the court, if it be assumed that there would regularly be 14,000 vehicles annually, the $7.50 fee thereon would be $105,000.00. In this regard, however, it should not be overlooked that it is undisputed that since the 1937 Act became effective the volume of caravan cars coming into this state has substantially decreased. [R. 159, 108.]

EVIDENCE IN REGARD TO THE "COST OF * * * MAINTAINING THE HIGHWAYS," I. E., IN REGARD TO THE REASONABLE AMOUNT OF THE SECOND $7.50 FEE.

As has been noted, the statute also provides for a $7.50 fee "as compensation for the privilege of using the public highways of this State." (Sec. 4.) This fee is likewise collected by the Motor Vehicle Department, but is payable into the State highway fund "as compensation for the privilege of using the highways of this State." (*Id.* Sec. 7.) The State highway fund is reserved for moneys for the acquisition of rights of way and the construction, maintenance and improvement of State highways. (Cal. Stats. 1935, ch. 29, Secs. 182-183.) Section 6 of the Caravan Act of 1937 provides:

> "The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this State by such vehicle during the period that such vehicle may be operated for the purpose of sale or exchange under and solely in accordance with such permit upon the public highways of this State; provided, however, that nothing in this section shall exempt the owner or operator of such vehicle from compliance, except with respect to fees or license charges, with all laws of this State now or hereafter adopted, relating to safety in the use of the public highways."

"The burden rests on appellee to show that the fee is excessive for the declared purpose." *Ingels v. Morf*, 300 U. S. 290, 296; *Interstate Busses Corp. v. Blodget*, 276 U. S. 245; *Clark v. Poor*, 274 U. S. 554.

Appellees have stressed the fact that there are approximately 500,000 non-resident vehicles which annually enter the State of California which are *not* required to pay the fee prescribed by the Caravan Act. The legislature apparently determined that the State is adequately recompensed by other means for the use of the highways by these automobiles, and for any increased policing costs occasioned thereby. In any event, such use is so clearly of a different sort than that which comes within the Caravan Act that it cannot be seriously contended that the legislature was unreasonable or arbitrary in determining that a fee should be charged for the use of the highways for transporting vehicles for the purpose of sale, and that a fee should not be charged for the occasional pleasure use of the highways by tourists from other states, driving their own cars. Certainly, such evidence does not show that the *amount* of the fee charged for the privilege of using the highways for the transportation of automobiles for the purpose of sale, is *unreasonable*. *Dixie Ohio Express Company v. State Revenue Commission,* decided by this Court on January 30, 1939, 59 S. Ct. Rep. 435.

The District Court in its opinion made no attempt to take the foregoing factors into consideration. Its position appeared to be that no necessity existed for the classification from which the fees are derived. The Court, however, plainly did not understand the evidence. This appears in the statement in the last paragraph on page 38, Record; the Court plainly enough did not have in mind at that point the testimony of Asher [R. 105], who spoke for all of the appellees [R. 107]; or the testimony of Manford [R. 75]. At the top of page 40, Record, a

statement appears which apparently was intended by the Court to show, among other things, lack of necessity for the expenditures which the state officers claim are necessary for policing the traffic and enforcing the act. We examine this statement at some length as an illustration of the Court's complete minterpretation and misunderstanding of the record.

The Court states [R. 40] that the records of the Public Service Commission of Nevada [which is the affidavit of Lee S. Scott, R. 142] show that "a total of only 9 cars were brought into California for sale over Highway 50," during the first seven months of 1937. And the Court adds: "These undisputed figures put in grave doubt the question as to whether substantial traffic problems exist by reason of caravaning."

It requires only a little reflection and a reference to any standard highway maps of Nevada and California (or see United States Bureau of Public Roads maps) to see how wrong the Court was. In the first place, when the Nevada records in question refer to a U. S. Highway by number they refer to its as a *"Gateway"* [R. 143], obviously the point where entry was made into Nevada from the east, and plainly not where the cars left Nevada and entered California on the border between the two states. Gateway certainly means entrance, and it is a matter of common knowledge that the fee would be collected at or as near the point of entrance to the state as possible and not at the point of departure. The evidence shows the California fee is collected that way at the border stations. The fact that cars enter Nevada on the east on one highway assuredly does not establish that they enter California on the same highway; that is, the fact that the Nevada records show fees collected from only nine cars at the

"Gateway" on U. S. Highway 50 between January 1, 1937, and August 1, 1937, does not prove or even raise an inference that other cars entering Nevada on other highways did not, at some point in the state and after the fee was paid; switch over onto No. 50 and enter California on it.

However, affirmative proof of the Court's erroneous deductions is furnished by a reference to the Nevada and California highway maps. To begin with, U. S. Highways 50 and 40 enter the eastern boundary of Nevada at a common point just west of Wendover, Utah, and separate into two highways right at the Nevada boundary. It is probable, though not necessary to support our argument, that the Nevada authorities collect the fees at this common point and in common parlance refer to it as the No. 40 Gateway. In the second place, this Court can judicially know that anyone entering Nevada at the common point of the two highways on a commercial trip to California will follow No. 40 as far as Reno, Nevada. No. 40 traverses the easiest route through Nevada as far as Reno. It follows the main line of the Southern Pacific Railroad, the historic overland route first used to reach California, and the towns are much closer together than on any other Nevada highway. On No. 50 the towns are as much as one hundred miles apart and the highway does not parallel any railroad. However, upon reaching Reno on No. 40, some cars will leave 40 and go south a short distance and enter No. 50 at Carson City, Nevada, and proceed on into California on No. 50. There are fleets on U. S. Highway 395 north of Reno in Lassen County, California [R. 95], and as these fleets proceed south they enter U. S. 50 at Carson City Nevada, and their natural course is to proceed on into California again on U. S. 50.

IV.

If Any Part of the Act Is Invalid the Court Should Hold That Part Invalid Only and Leave the Remainder of the Act in Effect.

The Act in section 14 [R. 15] contains a saving clause, which will be given effect by this Court. *Weller v. People,* 268 U. S. 319; *Carley & Hamilton v. Snook,* 281 U. S. 66; *Frost v. Oklahoma Corporation Commission,* 278 U. S. 515; *Supervisors v. Stanley,* 105 U. S. 305, 314.

The effect of these decisions and of the saving clause is that even if the Court concludes that one, or even more, parts of the act are invalid, but finds them severable, the rest of the act will stand. If the $7.50 fee for regulation is excessive, or if section 8 (the zoning provision) is invalid, a complete and workable act remains without either or both of these provisions, and such remainder should be allowed to stand.

The principle of severability upon partial invalidity prevails in California; two California cases being outstanding authorities, *Bacon Service Corpn. v. Huss,* 199 Cal. 21, 248 Pac. 235; *Ex parte Schuler,* 167 Cal. 282, 139 Pac. 685.

This principle, if necessary, calls for particular application in this case. That California faces a pressing problem with respect to the caravaning of automobiles is evident, not only from the record in this case, but from the fact that the legislature enacted the present law immediately after the former law was declared invalid by this Court on March 1, 1937, in *Ingels v. Morf,* 300 U. S. 290. Two successive legislative acts upon the same subject matter constitute a weighty pronouncement of the findings of the legislature as to the necessity of this legislation.

The previous act did not have a saving clause. The present act shows a careful attempt to conform to the actual holding in *Ingels v. Morf, supra,* with a further attempt to meet the other principal objection urged by the appellee in that case but which the Court did not pass upon. And in addition to the two principal substantive changes introduced by the legislature into the second act, a saving clause was written in. This constitutes assuredly the plainest possible declaration by the legislature that the saving clause should be given literal application by this Court.

In dealing with a difficult problem the legislature has thus requested the courts not to annul the act completely, but, if any part or parts are shown by actual facts to be invalid in practical operation, to strike down only such invalid portions and leave an act still remaining that can, if necessary, be amended so as to conform to the Court's decision. This Court judicially knows that one of the states' most pressing problems is "to mitigate the destruction of life, limb and property resulting from the use of motor vehicles," *H. P. Welch Company v. State of New Hampshire,* decided by this Court on January 30, 1939, 59 S. Ct. Rep. 438. This problem is exceedingly intricate and complicated. If all of the act cannot be saved, assuredly the legislature's plea that the remainder be allowed to remain in force should not go unheeded.

By its prompt reenactment of the present act the legislature has made plain its concern for the regulation of the subject matter. Details of its application, the specific fee applied, or the class or classes to which it applies are local problems. The invalidity of any specific provision pertaining to any of these subjects should not operate to invalidate the entire act. The remainder should be allowed

to stand and the legislature should be allowed to correct or to treat its local problems by the correction or adjustment of such special provisions in accordance with the pronouncements of the Court.

Conclusion.

For the foregoing reasons, which are summarized in the summary of argument on page 13 hereof, it is respectfully submitted that the act in question, chapter 788, Statutes of 1937 of California, should be declared constitutional by this Court, and that the decree of the District Court should be reversed and the injunction against the enforcement of the act dissolved.

Respectfully submitted,

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APPENDIX A.

"CARAVANING" of motor vehicles.

An act to regulate the caravaning of vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of vehicles in caravan for the privilege of using the public highways and for the cost of regulating persons engaged in caravaning and providing such fees shall be a lien and for the enforcement of such liens and the collection and disposition of such fees and imposing penalties for violation thereof, and to repeal an act entitled "An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of motor vehicles in caravan and imposing penalties for violation thereof," approved July 6, 1935, declaring the urgency thereof, and providing that it shall take effect immediately.

(Chapter 788, Statutes of 1937. In effect July 2, 1937.)

SECTION 1. The term "caravaning" as used in this act shall mean the transportation of any vehicle of a type subject to registration under the Vehicle Code, operated on its own wheels, or in tow of a motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, purchaser or prospective purchaser, whether such agent, dealer, purchaser or prospective purchaser may be located within or without this State.

SEC. 2. The term "dealer" when used in this act shall mean and include every individual, partnership, corporation or trust whose business in whole or in part is that of caravaning new or used vehicles as herein defined, or of selling or exchanging new or used vehicles, and shall in-

clude every agent or representative of every such person engaged in such business, except that nothing herein contained shall be construed to require the performance of any act or the payment of any fee by any agent or representative which has previously been performed or paid by his principal.

SEC. 3. No person, firm or corporation, shall use any highway in this State for caravaning vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California upon application at its office in Sacramento or any of its regularly established branch offices other than stations at the State boundary line a special permit as to each vehicle so caravaned, for use of the highways of this State in caravaning such vehicles, which permit shall be displayed by posting the same upon the windshield of such vehicle or in other prominent place thereon where it may be readily legible.

SEC. 4. As a condition precedent to the use of the highways of this State for the purpose of caravaning and the issuance of any special permit provided for in the previous section of this act, the Motor Vehicle Department of the State of California shall charge and collect, for each vehicle for which a caravan permit may be issued whether such vehicle be operated under its own power or in tow of a motor vehicle, a fee of seven and fifty one-hundredths dollars as compensation for the privilege of using the public highways of this State and a fee of seven and fifty one-hundredths dollars to reimburse the State for expense incurred in administering police regulations pertaining to the operation of vehicles moved pursuant to such permits and to public safety upon the highways as affected by such operation.

SEC. 5. Permits issued pursuant to the provisions of this act shall be valid for a period of six months after date of issuance and shall be valid only in the hands of the original permittee but shall not authorize the operation of any vehicle other than that for which originally issued. Such permits shall contain such information and be in such form and shall be issued under such rules and regulations as may be prescribed by said Motor Vehicle Department.

SEC. 6. The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this State by such vehicle during the period that such vehicle may be operated for the purpose of sale or exchange under and solely in accordance with such permit upon the public highways of this State; provided, however, that nothing in this section shall exempt the owner or operator of such vehicle from compliance, except with respect to fees or license charges, with all laws of this State now or hereafter adopted, relating to safety in the use of the public highways.

SEC. 7. All fees from the issuance of permits provided for under this act shall be collected by the Motor Vehicle Department. One-half of such fees shall be paid into and become a part of the motor vehicle fund in the State treasury, and are hereby appropriated out of said fund for the support of the Department of Motor Vehicles; provided however, that should a motor vehicle support fund be created in the State treasury said one-half of such fees shall be paid into and become a part of said motor vehicle support fund. The remainder of such fees shall be paid into and become a part of the State highway fund in the

State treasury. The moneys so derived by the State are intended as compensation for the privilege of using the highways of this State and to reimburse the State Treasury for the added expense which the State may incur in the collection of such fees and in the administration and enforcement of this act and the expense of policing the highways over which such caravaning may be conducted.

SEC. 8. The provisions of this act shall not apply to the transportation of motor vehicles between points within Zone 1 or between points within Zone 2, which zones are hereby defined as follows:

ZONE 1—That part of the State of California lying within the counties of San Diego, Imperial. Orange, Riverside, San Bernardino, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Kern and Inyo;

ZONE 2—That part of the State of California not included within Zone 1 as herein defined.

SEC. 9. Every dealer in vehicles shall report to and list with the Motor Vehicle Department on forms to be prescribed by such department and in accordance with rules in regard thereto promulgated by such department, each vehicle received, held or offered by him for sale which has been caravaned over the public highways of this State. Such report and listing shall be made forthwith upon the receipt of such vehicle. Such report, among other things, shall show the number of the caravan permit authorizing the operation of the vehicle covered in such report. In the event no permit has been secured for such operation payment of the required fees and penalty shall be made to the department and shall accompany such report. In the event permit fees required by this act are not paid when due a

penalty of fifty per cent of such fees for each such vehicle shall be assessed and collected by the department.

SEC. 10. On demand of the Motor Vehicle Department, any dealer in vehicles shall furnish to the department evidence as to the origin of any vehicle not previously registered in this State which is held or offered by him for sale, and evidence of the manner in which such vehicle was transported to the place in which it is or has been held or offered for sale. It shall be prima facie evidence that a vehicle not previously registered in this State is or has been transported for purpose of sale if it is exchanged, sold or offered for sale within thirty days after it has been operated over the public highways of this State.

SEC. 11. The permit fees provided for herein shall be due and payable in advance of the operation upon the public highways of any vehicle for which such permit is required and shall be a lien against the vehicle for which they are due during the time such vehicle is held for sale or offered for sale or resale.

SEC. 12. The department shall collect the permit fees and enforce the liens provided for herein by seizure of the vehicle or vehicles upon which such fees are a lien from the person or persons in possession thereof, if any, and by sale of such vehicle. The seizure and sale herein authorized may be made at any time after such fees become due and shall be conducted and carried out by the department in the same manner as is provided by law for the seizure and sale of personal property by the assessor for the collection of taxes due on personal property.

SEC. 13. Violation of any of the provisions of this act is a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment in the county

jail for not more than six months, or by both such fine and imprisonment.

SEC. 14. If any section, paragraph, clause or phrase of this act should be held to be unconstitutional by any court of competent jurisdiction such holding shall not affect any other part of this act and it is hereby declared to be the intention of the Legislature that no section, paragraph, sentence, clause or phrase of this act has been an inducement to the enactment of any other part hereof.

SEC. 15. An act entitled "An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of motor vehicles in caravan and imposing penalties for the violation thereof," approved July 6, 1935, is hereby repealed.

SEC. 16. This act is hereby declared to be an urgency measure within the meaning of Section 1 of Article IV of the Constitution, necessary for the immediate preservation of the public peace, health and safety and as such shall take effect immediately.

The following is a statement of facts constituting such necessity:

Experience has shown that, due to climatic conditions, the caravaning of vehicles occurs almost exclusively during the spring and summer months. It is necessary, therefore, in order to regulate caravan vehicles, the number of which is now increasing, that this act shall take effect immediately.

APPENDIX B.

"CARAVANING" of motor vehicles.

An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of motor vehicles in caravan and imposing penalties for violation thereof.

(Chapter 402, Statutes of 1935.)

SECTION 1. The term "caravaning" as used in this act shall mean the transportation from without the State of any motor vehicle operated on its own wheels, or in tow of another motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, manufacturers' representative, purchaser or prospective purchaser, whether such agent, dealer, manufacturers' representative, purchaser or prospective purchaser may be located within or without this State. The caravaning of motor vehicles as herein defined shall be considered as the transportation of property for hire by motor vehicle and shall be subject to all the laws of this State relative to the transportation of property for hire by motor vehicle upon the public highways of this State.

SECTION 2. No person, firm or corporation shall use any highway in this State, for caravaning motor vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California a special permit as to each vehicle so caravaned, for use of the highways of this State in caravaning such vehicle, which permit shall be displayed by posting the same upon

the windshield of such vehicle or in other prominent place thereon where it may be readily legible. It shall be unlawful to operate three or more vehicles or groups of vehicles in caravan unless a space of at least one hundred fifty feet shall at all times be maintained between each vehicle or group of vehicles being so caravaned.

SEC. 3. As a condition precedent to the issuance of any special permit provided for in the previous section of this act the Motor Vehicle Department of the State of California shall charge and collect a fee of fifteen dollars for each motor vehicle for which a caravan permit may be issued, whether such vehicle be operated under its own power or in tow of another motor vehicle; provided, however, that no such permit shall be issued by said Motor Vehicle Department unless and until the applicant therefor shall have produced evidence to the satisfaction of said Motor Vehicle Department that all of the laws of this State relating to the transportation of property upon the public highways therefor for hire shall have been complied with.

SEC. 4. No permit issued under this act for caravaning motor vehicles or vehicles shall be transferable either as between persons or as to the vehicle for which it is issued, and shall only be valid for the trip or trips to be specified in said permit, and in no event shall such permit be valid for a period of more than ninety days after it shall have been issued. Such permit shall contain such information and be in such form and shall be issued under such rules and regulations as may be prescribed by said Motor Vehicle Department. Such permit shall be conditioned upon the permittee complying with all laws of the State of California and the United States.

SEC. 5. The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this State by motor vehicle during the period that such motor vehicle may be operated under and in accordance with such permit upon the public highways in this State; provided, however, that nothing in this section shall exempt the owner or operator of such vehicle from compliance, except with respect to fees or license charges, with all laws of this State now or hereafter adopted, relating to the transportation of property for hire.

SEC. 6. All fees from the issuance of permits collected by the Motor Vehicle Department under this act shall be paid into the general fund in the State treasury.

Said department shall file with the Controller on or before February first and August first of each year a detailed account of the receipts of said Department from this source for the six months next preceding. The moneys so derived by the State are intended to reimburse the State treasury for the added expense which the State may incur in the administration and enforcement of this act and the added expense of policing the highways over which such caravaning may be conducted, so as to provide for the safety of traffic on such highways where caravaning is being conducted.

SEC. 7. Violation of the provisions of section 2 or of section 4 of this act is a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

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MAR 25 1939

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 534.

RAY INGELS, as Director of the Department of Motor Vehicles of the State of California, et al.,
Appellants,

v.

PAUL GRAY, INC., a California corporation, et al.,
Appellees.

Appeal From the District Court of the United States for the Southern District of California.

REPLY BRIEF OF APPELLANTS.

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CASES CITED.

PAGE

Aero-Mayflower Transit Co. v. Georgia Public Service Commission, 295 U. S. 285 5

Bradley v. Public Utilities Commission of Ohio, 289 U. S. 92 4

Buck v. Kuykendall, 267 U. S. 307 4

Clyde Mallory Lines v. Alabama, 296 U. S. 261 13

Continental Baking Co. v. Woodring, 286 U. S. 352 5

Dooley v. Pease, 180 U. S. 126 2

Euclid v. Ambler Realty Co., 272 U. S. 365 ..... 3, 15

Hicklin v. Coney, 290 U. S. 169 5

Ingels v. Morf, 300 U. S. 290 3

Interstate Transit, Inc. v. Lindsey, 283 U. S. 183 3

Morf v. Bingaman, 298 U. S. 407 ..... 4, 14

Murphy v. California, 225 U. S. 623 13

Smith v. Cahoon, 283 U. S. 553 5

South Carolina State Highway Department v. Barnwell Bros., 303 U. S. 177 ..... 2, 3

Sproles v. Binford, 286 U. S. 374 ..... 5, 14

Standard Oil Co. v. Marysville, 279 U. S. 582 3

Holyoke Water Power Co. v. American Writing Paper Co., 300 U. S. 324 15

Kentucky Whip & Collar Co. v. Illinois Central R. Co., 299 U. S. 334 15

Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192 15

United States v. Carolene Products Co., 304 U. S. 144 15

In The

Supreme Court of the United States

October Term, 1938.

No. 534.

Ray Ingels, as Director of the Department of Motor Vehicles of the State of California, et al.,
Appellants,

v.

Paul Gray, Inc., a California corporation, et al.,
Appellees.

Appeal From the District Court of the United States for the Southern District of California.

REPLY BRIEF OF APPELLANTS.

SUMMARY OF APPELLANTS' REPLY ARGUMENT.

1. Appellees are in error as to the effect of the District Court's findings of fact. Page 2
2. Appellees are in error as to their contentions on the burden of proof. Page 3

3. *Buck* v. *Kuykendall*, 267 U. S. 307, is not in point. Page 4

4. *Smith* v. *Cahoon*, 283 U. S. 553, does not sustain appellees' position. Page 5

5. Appellees' traffic is a caravan movement. Page..... 6

6. Appellees' criticism of affidavits not justified. Page.... 8

7. Reply to appellees' argument on classification. Page 8

1.

Appellees take a patently erroneous view of the effect of the District Court's findings of fact. On pages 14 and 67 they cite *Dooley* v. *Pease*, 180 U. S. 126, to the effect that if there is any evidence to support a finding of fact it will not be disturbed on appeal. That case is not applicable here; that was a law action with the jury waived, ordinary litigation between private parties, and of course the Court's findings were the equivalent of those of a jury.

An entirely different rule obtains here, however, where the constitutionality of a state law is in question. We pointed this out briefly on page 16 of our first brief. The rule governing the instant case is this: The legislature has in the first instance based its action upon facts found by it, and

> "Being a legislative judgment it is presumed to be supported by facts known to the legislature unless facts judicially known or proved preclude that possibility. Hence in reviewing the present determination *we examine the record, not to see whether the findings of the court below are supported by evidence, but to ascertain upon the whole record whether it is possible to say that the legislative choice is without rational basis.*" (Citing cases.)
>
> *South Carolina State Highway Department* v. *Barnwell Bros.*, 303 U. S. 177.

It makes no difference that there may be opposing evidence sufficient to support the lower court's findings. *This Court has reviewed the facts and reversed decrees of lower courts which failed to adhere to this rule. Standard Oil Co.* v. *Marysville,* 279 U. S. 582; *Euclid* v. *Ambler Realty Co.,* 272 U. S. 365; *South Carolina State Highway Department* v. *Barnwell Bros., supra.*

It is manifest that the Record not only fails to show that the classification made by the Caravan Act is without rational basis, but that the Record does abundantly support the classification.

In our first brief we discusssed the evidence and pointed out that the District Court's findings of facts are not supported by it; that on the contrary it supports the legislative action. And, as pointed out in the cases above cited, the inquiry in this case is limited to whether the record shows there is no basis for the legislative action, regardless of the Court's findings.

2.

Appellees are in error as to their contentions on the burden of proof in pages 62-64 of their brief. The rule is (and always has been) that where it appears from the face of the statute, as here (or otherwise appears), that fees required of motor vehicle operators, either interstate or intrastate or both, are exacted as compensation for the privilege of using the highways, or for the administration of the law and regulation of the traffic, or for both purposes, the burden rests on one attacking the law to prove that the fees required are excessive for these purposes. Every case, from earliest to latest, has so declared. See *Interstate Transit, Inc.* v. *Lindsey,* 283 U. S. 183 at 186; *Ingels* v. *Morf,* 300 U. S. 290 at 296; and cases cited. The authorities cited by appellees are not in point here; it suffices to say they have not changed any rule. The fact that the fees are

required of both interstate and intrastate operators obviously does not change the rule, *Morf* v. *Bingaman*, 298 U. S. 407 at 410.

3.

Appellees lay great stress upon *Buck* v. *Kuykendall*, 267 U. S. 307 (brief pp. 33-36, 40-41, 53, 55, 61), but it is obvious that case has no bearing upon this one, as is evident from a reading of *Bradley* v. *Public Utilities Commission of Ohio*, 289 U. S. 92, at page 95, where the limitations of the *Buck* case are explained. The statute condemned in *Buck* v. *Kuykendall* had nothing to do with the power of the state to tax and police the traffic of interstate motor vehicle operators, which are the only powers in question here. Rather, the statute in the *Buck* case was held invalid because, as to motor vehicle traffic (267 U. S. at 316):

> "• • • it determines whether the prohibition shall be applied by resort, through state officials, to a test which is peculiarly within the province of federal action—the existence of adequate facilities for conducting interstate commerce."

That is, the law authorized the state officials to determine public convenience and necessity as to interstate transportation, which is a field of action denied to the states even in the absence (at that time) of action by Congress. Obviously the Caravan Act does not touch that field, and no claim has been, or could be, made that it does. The Caravan Act, admittedly, deals with legitimate fields of state action.

In *Bradley* v. *Public Utilities Commission of Ohio, supra*, the action of state officials in denying a common carrier by motor vehicle a certificate to operate in interstate commerce was sustained because the state action was based on maintenance of safety on the highways. While the first part of

the opinion states that the motor carrier had failed to show that any other route was open to him, the later part of the opinion clearly shows that the decision did not turn on that point.

Thus in the *Bradley* case, where the state's denial of interstate operation was based upon a ground within the sphere of state action, the police power regulation of traffic, the state action was sustained. The state's denial in the *Buck* case was based on consideration of public convenience and necessity, altogether outside of state power, and was therefore annulled by this Court without any inquiry as to its reasonableness.

4.

Appellees also stress *Smith* v. *Cahoon*, 283 U. S. 553 (brief pp. 37-41, 52, 54), but it is likewise evident that case affords no authority against the Caravan Act. For no observable reason that case appears to have been much misunderstood, and it has been distinguished and explained in later cases. As was said in *Aero-Mayflower Transit Co.* v. *Georgia Public Service Commission*, 295 U. S. 285, at 292:

> "*Smith* v. *Cahoon* has been considered in later cases in this Court, and the limits of its holding, clear enough at the beginning, have been brought out in sharp relief."

The cases which have considered *Smith* v. *Cahoon*, with respect to the principles here involved, all sustained statutes which either in terms or in practical operation created zones similar in effect to the zoning features of the Caravan Law, and sustained exemptions wider in scope. These cases (all cited in our first brief) are: *Continental Baking Co.* v. *Woodring*, 286 U. S. 352, at pages 368, 371-373; *Sproles* v. *Binford*, 286 U. S. 374, page 394; *Hicklin* v. *Coney*, 290 U. S. 169, pages 173, 175; and *Aero-Mayflower Transit Co.* v. *Georgia Public Service Comm.*, 295 U. S. 285, pages 291-293.

Two reasons were stated for holding the statute bad in *Smith* v. *Cahoon*. One was vagueness. The other was that carriers of the same type were differently classified for liability insurance requirements. There is no charge of vagueness in this case; and every person moving motor vehicles in caravans is subject to the law and those who do not operate caravans are not subject to it.

5.

Appellees take issue with our statements in our first brief (pp. 6, 44, 45), that the general stipulation (R. 72-75) and the Manford testimony (R. 75-77) were not related to appellees, but that appellees' entire operations consist of the movement of cars in fleets of 19 to 25 as described in the Asher testimony (R. 105-107), made applicable by stipulation to the caravaning of cars of all of the appellees (R. 107).

We do not want to burden the Court with a squabble over the meaning of the evidence. In Part II of our brief (pp. 46-57) we argue that the Act is valid as to the entire volume of the included traffic, both single vehicles and caravans. It is altogether proper, however, to say that if appellees move all of their vehicles in caravans of 19 to 25 vehicles as described by Mr. Asher, they are not in position to claim the advantage, if any, inuring from the fact that the stipulation (R. 72-75) and the Manford testimony (R. 75-77) show that some singly driven vehicles not in caravan are brought into the State for purpose of sale; and we believe that Record shows that appellees' operations are confined to the caravan movements described by Mr. Asher.

This seemed so evident that we did not in our first brief do much more than mention the point. It may be that a little further consideration of it is in order.

The general stipulation (if it is considered not to be withdrawn by putting Manford on the stand), and the Manford testimony came at the beginning of the testimony. No at-

tempt or offer was made to apply it to anyone in particular. Appellants accepted it, but at that time it was preliminary evidence, and appellants could not then know whether it was meant to be applicable to all of the appellees or whether later on it would be linked to some of them. Obviously it was not meant to be applicable to appellees generally or to any appellee in particular, because none of its terms fits or corresponds to the Asher testimony as to caravans of 19 to 25 vehicles. Thereafter Mr. Asher testified in specific terms (R. 105-107) as to his operations, and a stipulation applying that to all appellees was offered by counsel for appellees and was accepted (R. 107).

Appellees' bill of complaint alleges only one type of operation, *a movement of automobiles in convoy.* See paragraph VII (R. 3). The one automobile which is described was driven "in convoy with other caravaned automobiles." There is no allegation anywhere in the bill of complaint that appellees bring cars into the state for purpose of sale singly and not in company with other automobiles. There is no claim in the bill of complaint that the Act discriminates against appellees with respect to automobiles brought in singly. The claims which appellees now make as to unconstitutionality because of single cars brought into the state for sale do not appear, even by the remotest inference, in the bill of complaint. In fact the only allegation relating in any way to a single car movement was amended by appellees in such a way as to allege a movement in convoy. (R. 17, 18, 21)

The findings of fact (R. 57) contain nothing as to single car movements by appellees. If there were such surely that would appear in the findings.

However, giving to all the evidence the most favorable construction appellees claim for it, eighty per cent of appellees' vehicles must move in fleets of 19 to 25 vehicles as described by Mr. Asher.

6.

Appellees make unwarranted criticism of the affidavits which are part of appelllants' evidence (pp. 46-47 appellees' brief). Most of these affidavits were filed at the time of the hearing on the application for temporary injunction on October 8, 1937. A few were filed later, but all except the Cato affidavit were on file some months before the final hearing on May 4, 1938 (R. 71-72). It was stipulated on April 22, 1938, that all of the affidavits then on file should be a part of the evidence on which the case would be submitted on final hearing, and that the Cato affidavit should be received as evidence on such final hearing subject to appellees' motion to strike portions of it (R. 24). The motion to strike was overruled (R. 24, 35).

It thus appears that appellees knew the contents of these affidavits long before the final hearing, but filed no affidavits and introduced no evidence to controvert any of their allegations. Their effect is the same as if it had been stipulated that the affiants, if called, would testify as stated in the affidavits.

7.

Appellees (Brief pp. 31-32) attack the zoning provisions by repeating the opinion of the District Court that the creation of the zones was an attempt to make an appearance of difference where none exists. *All of the evidence on the subject is directly to the contrary, however.* The affidavits of Ingels (R. 113), Bates (R. 156), and Edenholm (R. 118), furnish undisputed evidence that there is a substantial volume of caravans moving from one zone to another. To illustrate the weakness of Appellees' position and the District Court's opinion, let us assume that at this point we are dealing with the former law which included only the movement from without the state. In the face of the evi-

dence furnished by these three affidavits Appellees assuredly would have charged that the law was invalid because it exempted a substantial fleet movement.

That illustrates the reason for the zone provision; all of the fleet movement is included within the law; *there is no evidence that any fleet movement is omitted from it.*

Also, there are only two practical highways for motor vehicles between Los Angeles and San Francisco. They are narrow, two-lane, roads at approximately the line dividing the two zones, virtually bottlenecks and subject to congestion (R. 156). This is a factor justifying the zone provision.

Appellees (Brief p. 31) point to the testimony of Captain Personius as an indication that the fleet movements are entirely interstate.

Appellees are mistaken; they picked out a few words from the context in such a way as to rob the statement of its correct meaning. Here is the whole statement (R. 82):

> "The main route that I am familiar with is U. S. 40 coming through Truckee and there is a large amount of fleet movement over that highway. The fleet movements were entirely interstate."

Obviously he was then referring to U. S. 40 out of Truckee (a trifle southwest of Reno on the map opposite page 32 of Appellants' brief), in the middle of the extreme east side of Zone 2, where he would have no opportunity to observe fleets moving from one zone to another.

Appellees urge that the distinction between interstate and intrazone traffic is invalid (Brief pp. 42-46).

We analyzed the evidence showing the volume, extent and character of this movement in pages 27-39 of our first brief. Unsoundness of the objections urged by appellees are evident from our analysis. Appellees' emphasis of the volume of the intrazone traffic, however, suggests that a

little further development of the evidence summarized in pages 27-39 of our first brief will demonstrate even more forcibly the validity, in fact the actual legal necessity, of the intrazone exemption.

True enough, more cars move intrazone on their own wheels for purpose of sale than move interstate for that purpose. But of the volume of intrazone traffic, more than 97 per cent moves entirely within the metropolitan areas around San Francisco and Los Angeles shown in the upper right and lower left corners of the map opposite page 32 of our first brief. And of the less than 3 per cent moving outside of such areas, more than 70 per cent moves less than 75 miles. The foregoing will be demonstrated shortly.

Appellants state that these metropolitan areas are congested. There is no evidence of any traffic congestion in them. The undisputed evidence is to the contrary (R. 155). The legislature evidently concluded that these metropolitan areas have more facilities for policing traffic and moving it expeditiously than exist on the two-lane rural highways, and that the movement of cars for sale in these areas, of the character shown by the evidence, did not call for the same license fees and regulations as the movement included in the act. There is absolutely nothing in the Record which warrants the annulment of the legislative judgment as expressed in that act; on the contrary, the Record supports the legislative judgment.

Going now to the further analysis of the volume and extent of the intrazone traffic. The following page numbers refer to our first brief. In the first six months of 1937 there were 10,595 cars delivered on their own wheels from the General Motors Southgate factory near Los Angeles, and only 18 of these went outside the Los Angeles metropolitan area, defined on the map opposite page 32 by the circle with a 20 mile radius around the Los Angeles area (p. 35). The Murchison testimony and the Hunt affidavit (pp. 37 and 36, our first brief) establish that about 20,000

cars per year are driven away from the Chrysler assembly plant at Maywood, contiguous to Los Angeles, but that less than 400 per year of these go outside such defined Los Angeles metropolitan area.

In the first seven months of 1937, from the Chevrolet factory near San Francisco, which supplies all of California, 668 vehicles were delivered intrazone outside the San Francisco metropolitan area, defined by the evidence as the area in the upper right corner of the map opposite page 32 of our first brief enclosed by the circle with a 15 miles radius. The number delivered within the metropolitan area is not stated but must have been large (pp. 31-32). The distances the 668 moved are shown on page 32 of our first brief. From the Ford factory at Long Beach, just south of Los Angeles, in April and May, 1937, only 117 cars were driven intrazone at all, the distances being shown on pages 33-34 of our first brief.

Two hundred fifty new Studebaker cars per month are driven from the factory at Maywood, contiguous to Los Angeles, but all to points within a thirty mile radius from Maywood, substantially from Los Angeles (p. 38); this is only ten miles outside what is defined as the metropolitan area. Of the 150 new International trucks per month which are the subject of the stipulation at page 81, Record, 120 are delivered within the 20-mile radius Los Angeles metropolitan area (pp. 38-39). Appellees' witness Miske testified to moving 25 trucks per month in Zone 1 and 250 to 300 per month in Zone 2. Not to exceed 25 per cent of these are delivered within the metropolitan areas, but the actual distances the others move are not shown (p. 38). The affidavits relating to the other assembly plants (R. 131, 133, 135, 136, 147) do not furnish numerical comparisons, but state that the driveaway deliveries are in most cases effected within a radius of 75 to 100 miles. In the light of the other affidavits, most of these deliveries must have been within the metropolitan areas.

Summarizing the intrazone figures on the basis of comparing the number of deliveries within the Los Angeles and San Francisco metropolitan areas with the number of deliveries outside of such areas, we have, so far as numbers are available, the following:

Factory	*Total Number Delivered on Own Wheels Per Year Intrazone*	*Number of These Delivered Outside Metropolitan Areas*
GENERAL MOTORS Near Los Angeles (Southgate)	21,000	36
CHRYSLER Near Los Angeles	20,000	400
CHEVROLET Near San Francisco	Many, but not stated	668 in 7 Months
FORD At Long Beach	117 in 2 Months	53 in 2 Mos. (R. 122)
STUDEBAKER At Maywood near Los Angeles	3,000 (All within a radius of 30 miles)	
INTERNATIONAL	1,800	360

From the figures available it appears that not more than 3 per cent of the intrazone driveway deliveries are made outside of the metropolitan areas of Los Angeles and San Francisco. Of this 3 per cent, representative tables showing the length of deliveries appear at pages 32, 34 and 35 of our first brief. Seventy per cent of these are less than 75 miles.

So, if, as estimated by Appellees and the District Court (Appellees' Brief, pp. 42-43), 75,000 cars per year are moved intrazone for purpose of sale, the evidence indicates the following. About 3 per cent of this number, or 2250, go outside the Los Angeles and San Francisco metropolitan areas as defined on the map. Only 30 per cent of this 2250, or 675, move more than 75 miles; and only a very few beyond 100 or 125 miles.

And this intrazone traffic is entirely different than the interstate traffic conducted by the plaintiffs. That is also covered in pages 27-39 of our first brief. Appellees apparently claim that this is a movement of 2, 3, or 4 cars at a time. This is not correct. It is undisputed that each car is operated by its own driver. And mostly the cars are driven not in company with any other cars. It is only occasionally that 2 or 3 cars start away together (R. 119, 122-125, 127, 128, 131, 134, 136, 138, 150). And that is only a short journey, nothing like the integrated fleet movement of 19 to 25 cars operated long distances.

Appellees (brief, p. 35) talk about caravan movements on the highways not for the purpose of moving vehicles for sale. There is no evidence of any such traffic in the Record. That it does not exist is further attested by the fact that no statute, court decision, or treatise on highway regulation has ever considered it. In view of all of the statutes and administrative rulings for the purpose of controlling the movement of automobiles for purpose of sale, and the fact that traffic is identified in statutes, administrative rulings, decisions of the Interstate Commerce Commission, and otherwise, as *the* caravan operation, appellees' argument has no validity.

Appellees (brief, pp. 23-24) also describe other traffic conditions as to which there is no evidence in the Record. In any event, the whole subject of highway regulation is known to the legislature and there is nothing in the Record nor anything of common knowledge to indicate that the selection of the class was discriminatory.

The fact that appellees may not have required the particular attention of traffic officers in no way disproves the validity of the act. *Clyde Mallory Lines* v. *Alabama*, 296 U. S. 261 at 266; *Murphy* v. *California*, 225 U. S. 623 at 629. The traffic has been recognized by competent authority as extra hazardous, and accidents due to the particular manner

of caravan operation, including type of drivers used, have occurred (R. 157-160, 153-154, 140, 114, 118).

Appellees assert (brief pp. 48-54) that the statute is discriminatory as to cars moved into the state singly and not in caravan, the discrimination favoring cars coming into or moving in the state not for sale and cars moving for sale intrazone. This argument has been answered, we believe, in various places in our first brief, but we desire at this time to point out specifically a few ways in which single cars, not in caravan but subject to the act, differ from single cars not subject to the act. Single cars coming into the state for sale are driven by drivers obtained by want-ads in mid-western states, hired for the one trip only, unfamiliar with California mountain highways, and generally fatigued when California is reached at the end of a 2000 mile trip (R. 106, 114, 140-141, 153-154, 158). Captain Personius testified to the single caravan car constituting a special problem for some of these reasons (R. 96). As was said in *Morf* v. *Bingaman*, 298 U. S. 407: "The legislature may readily have concluded, as did the trial court, that the drivers have little interest in the business or the vehicle they drive and less regard than drivers of state licensed cars for the safety and convenience of others using the highways." The drivers of cars intrazone for sale are all California residents, are licensed chauffeurs, are steadily employed for the purpose of such driving, and some are under bond (R. 78-79, 80, 119-120, 127, 128). The trip is short. Furthermore, there is another distinction that may be mentioned between single cars subject to the act and cars driven not for sale; the former are being driven as and for the transportation of property for commercial gain, while the latter are driven solely for the transportation of persons. The legislature may validly classify between highway users on that basis, *Sproles* v. *Binford*, 286 U. S. 374. There the Texas law limiting truck weights was held valid although such limita-

tions did not apply to passenger busses. These circumstances, coupled with the fact (conceding for argument everything appellees claim for the Record) that single cars driven into the state for sale under the conditions described are only twenty per cent of the entire traffic, the remaining eighty per cent being cars in caravans of 19 to 25 vehicles, and the further fact that the operators of the twenty per cent are also the operators of the eighty per cent, assuredly justify the act as to the entire traffic. Particularly is this true in view of the principles expressed in the cases cited in pages 56-57 of our first brief.

Appellees (brief, pp. 55-56) concede the validity of the principle expressed in *Purity Extract & Tonic Co.* v. *Lynch*, 226 U. S. 192, and *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, but deny its application to this case. As a reply to appellees' argument we cite later cases making other applications of this rule: *Kentucky Whip & Collar Co.* v. *Illinois Central R. Co.*, 299 U. S. 334, 353; *Holyoke Water Power Co.* v. *American Writing Paper Co.*, 300 U. S. 324, 341; and *United States* v. *Carolene Products Co.*, 304 U. S. 144, 151.

We think the other points raised in appellees' brief are fully answered in our first brief; and we have tried to avoid making this reply brief a re-argument of the case by covering every point made in appellees' brief.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 534.

RAY INGELS, as Director of the Department of Motor Vehicles of the State of California, et al.,
Appellants,

v.

PAUL GRAY, INC., a California corporation, et al.,
Appellees.

Appeal From the District Court of the United States for the Southern District of California.

JOINT BRIEF OF PARTIES ON AMOUNT IN CONTROVERSY AND OTHER JURISDICTIONAL QUESTIONS.

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At the oral argument on Monday, March 27, 1939, the Court requested counsel for appellees and counsel for appellants to file briefs on the subject of the amount in controversy in this cause. In order to conserve the time of the Court the respective counsel have joined in submitting one brief, which also covers the other jurisdictional questions discussed in the oral argument.

Amount in Controversy

Without question the requisite amount must exist as to at least one plaintiff-appellee; that is, the requisite amount cannot be reached by aggregating the claims of two or more plaintiffs.

It is also clear that "The disputed tax is the matter in controversy, and its value, not that of the penalty or loss which payment of the tax would avoid, determines the jurisdiction," *Healy* v. *Ratta,* 292 U. S. 263, 269.

The amount in controversy, however, in the case of a tax of the present character, is not less than the amount of the tax "which may be demanded within any time reasonably required to conclude the litigation," *Healy* v. *Ratta, supra,* p. 272. The decision in that case turned upon the fact that the largest possible annual amount of the tax involved was, as claimed by complainant, $350.00, and as found by the district court, $300.00; while this Court held the largest annual exaction in issue was $85.00 (pp. 266, 267, 265). Under complainant's own claims in that case nine years of existence of the *status quo* would have been required to accumulate the amount of the tax to $3000.00, while under this Court's holding some twenty years would have been required.

That the amount in controversy in the instant case is the amount of the tax required to be paid within a reasonable period of time is shown by direct analogy by *Packard* v. *Banton,* 264 U. S. 140. There the complainant operated four taxicabs. The statute in question required an expenditure of $18.50 in insurance premiums per week for each cab, or a total of $74.00 per week. The opinion states "that his business would otherwise suffer." (pp. 142, 145). Jurisdiction was sharply contested by defendants. The Court held the requisite jurisdictional amount to be shown by the evidence recited above, although other evidence indicated the necessary expenditures would be considerably less (p. 145).

The testimony of one of the plaintiffs-appellees, Asher (R. 105), who testified on October 8, 1937 (R. 71), showed that during the preceding seven years he had caravaned into California more than four thousand cars. His testimony and the bill of complaint (R. 1) show that he is then continuing in the same business as during the preceding seven years and that the purpose of the suit is to permit him to remain in the same business without being required to pay the fee. The bill of complaint shows that he wants to bring in convoys of cars in the future, as he has done in the past, without payment of the fee. If he is continuing in business at and after the time of his testimony on the same scale as before, he will bring into the state about five hundred fifty cars per year, on which the total fees at $15.00 per car will be $8250. *Packard* v. *Banton, supra,* is express authority that under such circumstances the amount of the tax in controversy will be measured by assuming a continuance of present operations on the present scale for a reasonable time. In *Packard* v. *Banton* that reasonable time must have been about forty weeks, at least.

That the amount in controversy in a tax case is the amount accruing during the period of a year or more, rather than the amount of tax immediately due at the time of the trial or commencement of the suit, definitely appears from the Court's opinion in *Grosjean* v. *American Press Co.,* 297 U. S. 233, and from the transcript of record and briefs of counsel on file. In the opinion the Court states (p. 241):

> "* * * the record shows, that the requisite amount is involved in respect of each of six of the nine appellees."

The tax was two per cent of the gross business, and was payable quarterly on each quarter's gross business. The appellants contended, citing *Healy* v. *Ratta, supra* (292 U. S. 263), and pointed to the record, that as to eight of the nine appellees the first quarterly payment due Octo-

ber 1, 1934, was much less than $3000.00, being around a third or a fourth of that sum (appellants' brief in Grosjean case, p. 22); and claimed that under the authority of *Healy* v. *Ratta* the jurisdictional amount as to such eight was wanting. Appellees in the *Grosjean* case stated in their brief (pp. 12-13) that the requisite amount in controversy exists if

> "* * * the total amount of the tax demanded, or which may be demanded, within any time reasonably required to conclude the litigation, exceeds the jurisdictional amount. *Healy* v. *Ratta*, 292 U. S. 263 (1934)."

Appellees' brief then points out that except as to three of the nine appellees

> "* * * the amount of the tax accruing during the first twelve months was in excess of Three Thousand Dollars * * *."

It thus clearly appears that the statement in the Court's opinion in the *Grosjean* case (p. 241), "that the requisite amount is involved in respect of each of six of the nine appellees," was based on the amount of the tax which would accrue during the period of a year, provided the six appellees conducted their future operations on the same scale as in the past. The evidence was all submitted in the fall of 1934, and the calculation as to the amount of the tax which would become due in 1935 was all based upon experience prior to the fall of 1934.

It is to be kept in mind that the tax in the *Grosjean* case, as in the instant case, was dependent upon continuance in business and the amount of the business done.

There is a sharp difference in the treatment of this question between cases where jurisdiction is denied by the defendants, and where, as in the instant case, no denial of jurisdiction is made by any party. In *McNutt* v. *General Motors Corporation*, 298 U. S. 178, where the Court dis-

cusses at length the duty of the federal courts to investigate questions of jurisdiction *sua sponte*, the Court states in conclusion (p. 190):

> "Here, the allegation of the bill of complaint was traversed by the answer. The court made no adequate finding upon that issue of fact, and the record contains no evidence to support the allegation of the bill."

And in *Kvos* v. *Associated Press*, 299 U. S. 269, the Court said (p. 280):

> "Since the allegation as to amount in controversy was challenged in appropriate manner, and no sufficient evidence was offered in support thereof, the bill should have been dismissed. *McNutt* v. *General Motors Acceptance Corp.*, supra, p. 190."

In *Bitterman* v. *L. & N. R. R. Co.*, 207 U. S. 205, the Court said (p. 224):

> "The bill contained an express averment that the amount involved in the controversy exceeded, exclusive of interest and costs, the sum of five thousand dollars as to each defendant. The defendants not having formally pleaded to the jurisdiction, it was not incumbent upon the complainant to offer proof in support of the averment."

Without in any way intending to imply that the parties to litigation can, by their pleadings, remove this question from the consideration of the Court, we point to the fact that, so far as we have been able to ascertain within the time at our disposal, this Court has not, since the decision in the *Bitterman* case, held that any cause lacked the requisite jurisdictional amount, which came to it, as has the present case, with the jurisdiction not contested, with a finding of the district court sustaining jurisdiction, and with testimony comparable to that present here, where one plaintiff (Asher, R. 105) shows that if he continues business on his present

scale for one year he will be obliged to pay more than eight thousand dollars in taxes.

The Court intimated during oral argument that there might be some infirmity in the allegations of the bill of complaint and in the District Court's finding as to the jurisdictional amount, because there are a number of plaintiffs and the allegation and finding might be construed to mean an aggregate amount of all of the plaintiffs. We do not believe such a construction is tenable. We can find no decision to support it. The rule that the jurisdictional amount in cases of this character must exist as to each party is a simple one, long established, and well known. Counsel have not contended otherwise at any time. In making finding of fact number IV (R. 58), it seems impossible to attribute to the District Court an intention to make that an aggregate finding in view of the well known and long established true rule.

Other Jurisdictional Questions

The Act of August 21, 1937 (50 Stat. at L. 738), limiting the jurisdiction of district courts in suits involving state taxes, does not apply to this case. Section 2 of the Act provides that it shall not apply to suits commenced prior to its passage. This action was commenced on July 14, 1937 (R. 1).

The bill of complaint alleges (par. XI, R. 8) that there exists no method to recover back these fees if paid, and this is not denied. That is the law in California. Hence no ade-

quate remedy at law exists, and there is jurisdiction in equity. *Matthews* v. *Rodgers*, 284 U. S. 521.

Respectfully submitted,

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1938.

No. 534.

RAY INGELS, as Director of the Department of Motor Vehicles of the State of California; HOWARD E. DEEMS, as Registrar of the Department of Motor Vehicles of the State of California, and LON W. BUTLER, as Manager of the Los Angeles Office of the Department of Motor Vehicles of the State of California,

Appellants,

vs.

PAUL GRAY, INC., a California corporation; AL ASHER; HIRSCH MERCANTILE COMPANY, a California corporation; MELVIN E. SNYDER, an individual doing business under the firm name and style of United Auto Sales; KELLEY KAR COMPANY, a California corporation; L. H. THAYER; NATIONAL MOTOR CAR COMPANY, a California corporation; SAMUEL A. KLEIN, an individual doing business under the firm name and style of Klein Auto Company; BILL SANELLA; C. O. MACE; RAY CULBERTSON and JACK PARMILEE, a copartnership doing business under the firm name and style of Culbertson & Parmilee Motor Sales; E. F. PORTER; DON CARDIFF and F. A. RODGERS, a copartnership doing business under the firm name and style of Cardiff & Rodgers; and MOTOR TRADING COMPANY, a California corporation,

Appellees.

UPON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

BRIEF OF APPELLEES.

With Appendices.

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SUBJECT INDEX.

PAGE

Opinion and Dissenting Opinion 1

Jurisdictional Statement 1

Statement of the Case 2

The Statute in Question 2

Statement of the Facts 4

The Issues 9

Summary of Argument 10

Argument 12

I.

The classification attempted by the statute is invalid because arbitrary and discriminatory 12

(1) The District Court's findings of fact should not be disturbed 14

(2) The classification cannot be discriminatory 21

(3) The rule as to inclusiveness of a classification 23

(4) The power to (1) regulate, and (2) impose charges 25

(5) The changes made in the former law do not remove the discrimination 29

(6) The statute violates the commerce clause, when tested by Buck v. Kuykendall, because it prescribes not the manner of use, but the persons by whom the highways may be used 33

(7) The classification denies equal protection, when tested by Smith v. Cahoon, being an arbitrary and discriminatory attempt where no real distinction exists 37

PAGE

(8) The attempted distinction between interstate and intra-zone movements results in discrimination 42

(9) The discrimination between appellees' cars driven in singly and for-sale cars driven singly wholly within the state invalidates the statute 48

(10) Appellants' argument defending the description of for-sale cars as a class as against a description of the movement of cars is unsound 54

II.

The exaction of the fees in the amounts and in the manner attempted invalidates the statute 62

(1) The fee exacted for traffic regulation is excessive and unlawfully burdens interstate commerce and violates equal protection and due process 62

(2) The fee exacted for use of the highways is invalidated by arbitrary discrimination in favor of other cars of outside registry 69

III.

The basic defects in the statute destroy its severalibity and prevent the holding of any of its provisions valid or operative 72

Conclusion 74

TABLE OF AUTHORITIES CITED.

CASES.	PAGE
Bourjois, Inc., v. Chapman, 301 U. S. 183	63, 64
Buck v. Kuykendall, 267 U. S. 307	10, 33, 35, 36, 40, 41, 53, 55, 61
Continental Baking Co. v. Woodring, 286 U. S. 352	21, 22
Darnell & Son v. Memphis, 208 U. S. 113	39
Dixie Ohio Express Co. v. State Revenue Com., ... U. S. ....., 83 L. Ed. Ad. Op. 367	12
Dooley v. Pease, 180 U. S. 126	14, 67
Euclid v. Ambler Realty Co., 272 U. S. 365	53, 55, 56
Foote & Co., D. E., v. Stanley, 232 U. S. 494	64
Great Northern Railway v. Washington, 300 U. S. 154	62, 63, 64
Hendrick v. Maryland, 235 U. S. 610	13, 21
Hodge Drive-It-Yourself Co. v. Cincinnati, 284 U. S. 335	21
Ingels v. Morf, 300 U. S. 290	2, 3, 62, 63, 64, 67
Interstate Busses Corp. v. Blodgett, 276 U. S. 245	21, 63
Interstate Transit v. Lindsey, 283 U. S. 183	25, 26, 28, 63, 67, 70
Kane v. New Jersey, 242 U. S. 160	21
Michigan Public Utilities Commission v. Duke, 266 U. S. 570	21
Morf v. Bingaman, 298 U. S. 407	29, 47, 48, 57
Morf v. Ingels, 14 Fed. Supp. 922	24
Pasone v. Pennsylvania, 232 U. S. 138	23, 24
Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192	53, 55
Smith v. Cahoon, 283 U. S. 553	10, 37, 38, 39, 41, 52, 54
South Carolina State Highway Dept. v. Barnwell Bros., 303 U. S. 177	25, 26, 27, 28, 31, 32, 44, 45
Southern Pacific Co. v. Gallagher, ... U. S. ....., 83 L. Ed. Ad. Op. 352	12, 74
Southern Railway Co. v. Greene, 216 U. S. 400	13, 39, 74

PAGE

Sprout v. South Bend, 277 U. S. 163 21

Wallace v. Pfost, 57 Idaho 279, 65 Pac. (2d) 725 ..... 57, 58

Welch Co., H. P., v. State of New Hampshire, ... U. S. ....., 83 L. Ed. Ad. Op. 363 73

Weller v. People, 268 U. S. 319 72

STATUTES.

Caravan Act of 1935, Chapter 402, page 1453, Statutes of 1935 of California 2, 3, 29, 32

Caravan Act of 1937, Chapter 788, page 2253, Statutes of 1937 of California 2, 3, 4, 10, 29

Judicial Code, Sec. 238(3), 266 U. S. C., Title 28, Secs. 345(3) and 380 2

United States Constitution, Art. I, Sec. 8 12

TEXT BOOKS AND ENCYCLOPEDIAS.

4 Corpus Juris p. 857 14

TABLE OF APPENDICES

PAGE

Appendix A—Caravan Act of 1937, Chapter 788, page 2253, Statutes of 1937 of California 75

Appendix B—Caravan Act of 1935, Chapter 402, page 1453, Statutes of 1935 of California 81

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Appellees.

BRIEF OF APPELLEES.

Opinion.

The opinion of the District Court is reported in 23 Fed. Supp. 946 [R. 36], and the dissenting opinion at page 950 [R. 43].

Jurisdictional Statement.

Statement as to jurisdiction was filed as required by Rule 12 and probable jurisdiction was noted on January 9, 1939.

Statement of the Case.

This is an appeal from the final decree of a district court of three judges (Judicial Code, Section 238 (3) and 266; U. S. C., Title 28, Sections 345 (3) and 380), which enjoined appellants, defendants below, officers of the State of California, from enforcing against appellees the provisions of Chapter 788, page 2253, Statutes of 1937 of the State of California [Appendix A p. 75 *et seq.*], as an unconstitutional burdening of interstate commerce and unconstitutional infringement of appellees' rights under the equal protection of laws and due process clauses of the Fourteenth Amendment of the United States Constitution.

The Statute in Question.

As stated in appellants' brief the Act in question is known as the Caravan Law, which became effective July 2, 1937 [Appendix A p. 75]. It was enacted after the 1935 California Caravan Law [Appendix B p. 81] was held unconstitutional by this Court on March 1, 1937, in *Ingels v. Morf,* 300 U. S. 290.

As pointed out by appellants, two principal changes were made in the statute:

(1) The $15.00 fee charged by the 1935 Act was divided into two $7.50 fees by the 1937 statute, one being recited to be compensation for the privilege of using the public highways and the other reimbursement "for expense incurred in administering police regulations pertaining to the operation of vehicles moved pursuant to such permits

and to public safety upon the highways as affected by such operation." [Section 4, Appendix A p. 76]. This admittedly was an attempt to overcome the charge of excessiveness of the fee, held to invalidate the statute in *Ingels v. Morf, supra.*

(2) Instead of limiting the definition of caravaning to transportation of cars "from without the state," the limitation "from without the state" was removed in the attempt to make it appear that it applied throughout the state. By the provisions of section 8, however [Appendix A p. 78] the statute was made inapplicable in any intrastate transportation of cars except as between two zones; or, in other words, when cars are moved from the northern to the southern part of the state, or vice versa. (The zone boundary line practically divides the state in two, as shown on a map set forth opposite page 32 of appellants' brief.) While this Court in *Ingels v. Morf, supra,* did not pass upon the discrimination point, the attempt was made to remove the vulnerability of the statute to this charge. The same method of defining the cars subjected to the payment of the fees is used in the 1937 statute as that employed in the 1935 Act. They are defined as those transported "for the purpose of selling or offering the same for sale."

Statement of the Facts.

Appellees, consisting of five California corporations, two groups of copartners, and seven individuals, are engaged in the business of buying, selling and trading motor vehicles, and in the usual course of such business drive into the State of California from outside thereof automobiles for the purpose of resale, which automobiles are sought to be subjected to the imposition of certain license fees or taxes by the requirements of Chapter 788 of the California Statutes of 1937, commonly known and referred to as the Caravan Law [Appendix A p. 75]. After the effective date of said statute one of the plaintiffs purchased an automobile in Detroit, Michigan, and caused the same to be driven on its own wheels in convoy with other caravaned automobiles from the starting point of purchase into the State of California where it crossed over the California state line on or about July 6, 1937, at Yermo Station No. 8, and was thence driven on its own wheels to its destination in Los Angeles, California, for the purpose of resale. [R. 3.] Demand was made by the Registrar of the Department of Motor Vehicles of the State of California that the said plaintiff obtain a permit for the said automobile demanding that plaintiff pay a charge of fifteen dollars ($15.00) for such permit, plus a fifty per cent (50%) penalty of seven dollars and fifty cents ($7.50) for not having obtained the permit on said car prior to the entry of the vehicle into California, and the said Registrar threatened seizure and sale of the said vehicle for fees due in accordance with said Caravan Law. [R. 4.]

Each of the plaintiffs is engaged solely in the business of buying, selling and trading motor vehicles and has been so engaged for many years. [R. 6.] Plaintiffs, and each of them, from time to time in conducting their business

have purchased motor vehicles which were previously registered in a state other than the State of California and caused the same to be caravaned into the said state from other states on their own wheels or in tow of other motor vehicles for the purpose of resale. [R. 7, 63.] (The foregoing brief statement is compiled from uncontroverted allegations of the Complaint, and from the Findings of Fact.)

Approximately fifteen thousand vehicles enter the State of California each year for the purpose of sale. [See stipulation R. 81, and analysis of figures in this brief; *post*, p. 42]. Of these fifteen thousand vehicles three thousand are brought into the State of California singly, each in charge of a separate driver and not in convoy with other cars or as a part of any fleet or group movement; of the remaining twelve thousand cars, six thousand are moved singly, each car having a separate driver, but in convoy of varying numbers between ten and twenty; the remaining six thousand are in convoy and moved in two's, the rear car being coupled with the one in front, with one driver to each unit. These proportions or percentages apply to the movements of all cars brought into California from without the state for the purpose of sale. They were set forth in a stipulation presented at the outset of the trial. [R. 72-75.] They state the proportion of those cars brought in singly and not in fleet or group formation by these appellees as well as by all other importers of for-sale cars. This was the purpose of the stipulation, *i. e.*, to have the facts before the Court for adjudication as to the

issue of discrimination. Appellants attempt to evade this issue and contend that the stipulation had no relation to appellees' operations. (App. Br. pp. 6, 44, 45.) For analysis and discussion of the stipulation, see *post* herein, p. 49 *et seq.*

The plaintiffs (appellees here) put one of their number (Al Asher) on the witness stand to testify as to the manner in which he transports those cars which are brought in in fleet or group formation. [R. 105-107.] It was stipulated that the rest of the plaintiffs would testify in substance and effect the same. [R. 107.] The witness Asher testified that he has been engaged in the caravaning of automobiles into California since 1930 and that during that time he has caravaned in over 4,000 cars. He has purchased perhaps a dozen caravans personally and those were conducted to California personally, "by myself." [R. 105.] The majority of his cars come from Detroit. They are used automobiles. He selects the drivers himself. He personally interviews applicants obtained by advertising in a Detroit newspaper and selects not over half the applicants. His requirements are that the driver must be 21 years of age, or over, and must have a driver's or chauffeur's license in the state from which he starts. He prefers men from 30 to 40 years of age. The cars he purchases cost him from $600 to $1,000, at least. He carries insurance on his cars as follows: ten thousand to twenty thousand public liability, and five thousand property damage, but no collision insurance for his own cars. During the time he has caravaned cars into California he has had only two small claims for damages occasioned by his cars in transit, each of them less than $50.

Upon the subject of safety precautions enforced by him Mr. Asher testified that he puts a man in front to set the

pace and govern the speed on the road and he rides at the rear end with a single automobile, in order to take care of all the details and keep the drivers in line and obeying the speed laws. The instructions he gives are to keep the length of two telephone poles apart, at least, and that they are not to park except in proper places, and to keep on the right side of the highway. During the period that he has caravaned cars into California he has never had a highway patrolman as an escort of any caravan he conducted. [R. 105-107.] The foregoing evidence, of course, applies only to the cars brought in in fleets or groups, and does not relate to those cars driven in singly and unaccompanied, even though to be offered for sale.

Some comment appears desirable as to the review of the evidence in appellants' statement of the case. (Brief pp. 6-8.) As to movements of for-sale cars in fleet formation which originate and move entirely within the state (for the purpose of avoiding the charge of discrimination in relation to which the creation of the two zones was set up) appellants state that there is a "recognized and noticeable" movement of that character (App. Br. p. 8) and refer to the Ingels and Bates affidavits. [R. 113, 114, 156.] In the Ingels affidavit, however, he refers to any such as "occasional movements" [R. 113] and in the Bates affidavit he qualifies any such movements as being "under certain circumstances." [R. 156.]

As to movements entirely within the state and "intrazone," large numbers of motor vehicles (both automobiles

and trucks) are moved for the purposes of sale. As to the new cars alone, and applying to one zone only, and those moved by only two manufacturers, approximately three times the number of for-sale cars brought in from outside the state are moved within Zone 1. [R. 77, 119.] For an analysis of the numbers of vehicles so transported, see *post* in this brief, p. 42. The conclusion of the trial court was that the number is at least five times that of the outside for-sale cars [R. 40]. As to the character of the method of moving these cars, while no well defined fleet formation is followed, there is evidence that there are movements in groups. The witness Murchison, in answer to the question as to whether they move in groups of two or more, testified "two or three or four." [R. 77.] In the Ehlers affidavit he stated that the deliveries "were never made by grouping more than three such vehicles in a fleet" [R. 137], and in the Bates affidavit it was said that they are "never in groups of more than four cars" [R. 155.] In addition to the moving of these cars on their own wheels for purposes of sale, the evidence shows that as many as six are loaded on a truck-trailer unit and delivered in that way [R. 77-78].

In appellants' brief (p. 8) emphasis is placed upon the asserted short distances of the intra-zone deliveries, but by their own analysis of the Holm affidavit [R. 122] 22.3 per cent are driven over 100 miles and 11.2 per cent over 150 miles in Zone 1 (App. Br. p. 34). The air-line radii shown on the map in appellants' brief (p. 32) are not, of course, fair or accurate indications of actual driving distances.

The Issues.

I. Issues as to three kinds of discrimination are present in this case:

(1) Discrimination resulting from the attempt to create a distinction between (a) the entire interstate movement of for-sale cars (including those moved in fleet formation as well as those moved otherwise) and (b) the movement of all for-sale cars taking place wholly within the state;

(2) Discrimination between (a) those cars driven into the state singly (not in fleet formation) for the purpose of sale and (b) those driven singly solely within the state for like purpose

(3) Discrimination between (a) those driven into the state singly for the purpose of sale and (b) those driven in singly for a purpose other than that of sale.

II. There is the issue that the fee exacted is not confined to compensation. It can be "valid only if compensatory."

III. There is the issue that the provisions of the statute are not severable. Being basic, the defects invalidate the entire Act.

Summary of Argument.

I.

The classification attempted by the statute is invalid because arbitrary and discriminatory.

(a) The creation of the two intrastate zones by the new Caravan Law of 1937 was an attempt to create a distinction where none in fact exists in the effort to make it appear that movements of for-sale cars entirely within the state receive the same treatment as those brought in from without.

(b) The statute violates the commerce clause by prescribing in effect not the manner of use but the persons by whom the highways may be used, which was held to be offensive by this Court in *Buck v. Kuykendall.* Its primary purpose is the prohibition or restriction of competition.

(c) The attempted classification denies equal protection of the laws, being a palpably arbitrary attempt to distinguish where no ground of distinction exists and lacking proper relation to the purpose for which made, resulting in discrimination of the same character as that which this Court held to invalidate the Florida statute in *Smith v. Cahoon.*

(d) The distinction attempted to be drawn between interstate movements of for-sale cars and intrazone movements within the state results in discrimination, there being no substantial difference as related to safety of the highways when numbers and methods are compared.

(e) The arbitrary discrimination between appellees' cars and other out-of-state-registry cars driven singly, *i. e.*, not in fleet formation or in convoy or company with other cars, invalidates the statute.

(f) The arbitrary classification is not to be excused on the ground that "variations and departures" and incidental injustices are permissible because here the limits of the necessary element of reasonableness are transgressed.

II.

The exaction of the fees in the amounts and in the manner attempted invalidates the statute.

(a) The fee exacted for traffic regulations and enforcement of the Act is excessive and unlawfully burdens interstate commerce and violates the equal protection and due process clauses of the Fourteenth Amendment. The evidence did not show that the expenditure of the substantial amount claimed was either necessary or actually made for any purpose attributable to the enforcement and regulation required.

(b) The fee exacted for the privilege of using the highways is invalidated by the arbitrary discrimination in favor of other single cars of outside registry driven into the state.

III.

The basic defects of the statute as a whole destroy its severability and prevent the holding of any of its provisions valid or operative.

ARGUMENT.

I.

The Classification Attempted by the Statute Is Invalid Because Arbitrary and Discriminatory.

Appellees contend that the so-called Caravan Law is definitely discriminatory, that this discrimination not only offends the commerce clause (Art. I, Sec. 8 of the Constitution of the United States), but that it also violates their guarantee of equal protection of the laws and deprives them of their property without due process of law, in contravention of the Fourteenth Amendment.

A very real and substantial right of the appellees is invaded by the improper burdening of their interstate commerce here attempted. That this Court has consistently recognized this right and guarded against its violation is illustrated by the following quotation from a former decision contained in the recent case of *Southern Pacific Co. v. Gallagher* (decided January 30, 1939) ..... U. S. ....., 83 L. Ed. Advance Opinions 352, at 358:

> "The protection against imposition of burdens upon interstate commerce is *practical* and *substantial* and extends to whatever is necessary to the complete enjoyment of the right protected." (Italics supplied.)

Definite limitations are thrown around the imposition by states of compensatory charges where interstate commerce is affected. As stated by this Court in the recent case of *Dixie Ohio Express Co. v. State Revenue Com.*, decided January 30, 1939, ... U. S. ....., 83 L. Ed. Advance Opinions 367, 369 (quoting from the leading case of

Hendrick v. Maryland, 235 U. S. 610), their amount and the method of collection are held to constitute no burden upon such commence *only*

> "so long as they are *reasonable* and are fixed according to some uniform, *fair* and practical standard." (Italics supplied.)

Also, in safeguarding the guaranties of the Fourteenth Amendment *reasonableness* is made a *sine qua non* of any valid classification.

> "While *reasonable* classification is permitted without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a *reasonable* and *just* relation to the things in respect to which such classification is imposed." (Italics supplied.)
>
> *Southern Railway Co. v. Greene,* 216 U. S. 400, at 417.

We submit that these well established principles have been violated in the attempted exactions of the Caravan Law.

The Caravan Law is directed at those who move for-sale motor vehicles on their own wheels on the highways in interstate commerce, including such movements as may take place from the northern to the southern part of the state, or vice versa, these being designated "inter-zone movements." No permit is required or fee charged for any movements entirely within the state, unless the one inter-zone boundary line is crossed. All intra-zone movements, covering areas larger than many entire states, are

exempted entirely and motor vehicles can be transported for sale at will from any one point to any other point within either of the two zones.

In addition, the Caravan Law is directed at those who drive for-sale cars into the state singly and not in any caravan formation, while cars moved singly for other purposes are exempted from its operation.

(1) The District Court's Findings of Fact Should Not Be Disturbed.

While appellants do not treat the findings of fact separately in their brief, but merely refer to them in three instances in their argument (pp. 25, 27 and 43), we shall take them up briefly at this time and make further reference to the record upon disputed points throughout the argument.

It is of course elementary that, where there is any evidence to support a finding of fact which has been found by the trial court, this Court will not disturb it on appeal. In the case of *Dooley v. Pease,* 180 U. S. 126, this Court said (at 131):

> "Where a case is tried by the court, a jury having been waived, its findings upon questions of fact are conclusive in the courts of review, it matters not how convincing the argument that upon the evidence the findings should have been different . . . (citing cases).
>
> "Errors alleged in the findings of the court are not subject to revision by the Circuit Court of Appeals or by this court, if there is any evidence upon which such findings could be made . . . (citing cases)."

See, also:

4 *Corpus Juris* p. 857.

We now refer to the findings in consecutive order.

Findings of Fact Nos. I, II, III, IV and V.
[R. 57-63.]

These findings are not disputed.

Finding of Fact No. VI.
[R. 63.]

Appellants object to this finding on pages 25 and 43 of their brief. They do not dispute the fact that plaintiffs are engaged in the business of buying, selling and trading motor vehicles and have been so engaged for many years, or that in the conduct of such business they purchase motor vehicles previously registered in other states and cause them to be caravaned into California on their own wheels for the purpose of sale. Their objection to the remainder of the finding is refuted by the stipulation covering the facts entered into by the parties at the outset of the trial. [R. 72-75.] (For discussion of this, see *post* p. 48 *et seq.*)

Finding of Fact No. VII.
[R. 63.]

Appellants assert that this finding is without support in the evidence (Brief p. 27). That the movement of cars between zones is negligible is admitted by appellants' own evidence. In the Ingels affidavit it is referred to as an "occasional movement" [R. 113] and in the testimony of Captain Personius, who supervises the enforcement of the Caravan Law in Zone 2 which includes the forty-seven northern counties of the state [R. 81], he stated that he drew a distinction between intra-zone traffic and interstate traffic in so far as caravans are concerned "because of the

fleet movement of cars coming from without the state" [R. 82]. In the Bates affidavit he limits his reference to interzone movements to "certain seasons in the year" and "under certain circumstances" [R. 156].

That part of the finding as to there being approximately 4,000 cars transported monthly and using the highways of Zone 1 is supported by the evidence of the witness Murchison [R. 77] and the affiant Shaw [R. 119]. (See discussion, *post* on p. 42.) That intrazone movements are often made in convoys is shown in the testimony of Murchison [R. 77] where he stated that group movements of "two or three or four" were made, and in the appellants' affidavits of Ehlers and Bates, the former stating that such movements "were never made by grouping more than three in a fleet" [R. 137] and the latter that the movements are "never in groups of more than four cars" [R. 155]. That many of these intrazone delivery movements are in distinctly congested districts is shown by repeated statements that they are through "metropolitan areas" found in practically each affidavit filed. An example is the Shaw affidavit, relating to the deliveries for the General Motors Corporation plant. He stated that "drive-away" deliveries are usually for delivery within the Los Angeles metropolitan area [R. 119]. In the Busby affidavit it was stated that deliveries of cars within the metropolitan area are usually made by the drive-away method [R. 126], and that cars delivered on their own wheels within such metropolitan area are delivered singly or in units of two, three or four cars [R. 127]. The finding that many are moved

for considerable distances is supported by the various affidavits as to deliveries, the one chosen by appellants themselves in support of their contention revealing that 22.3 per cent are driven over 100 miles and 11.2 per cent over 150 miles. [Holm affidavit R. 122, as analyzed App. Br. p. 34.] (See discussion, *post* at p. 44.)

Finding of Fact No. VIII.
[R. 64.]

This finding is not disputed in the argument presented in appellants' brief, but it is stated in paragraph 7 of the Assignment of Errors (Brief p. 10) that it is not supported by adequate evidence. Appellees' witness Gray testified that the net profit his company made on each transaction in bringing in automobiles to California for sale is "approximately $10.00 per car" [R. 108]. He also testified that the reason he had only caravaned 19 cars since the Act went into effect was "because of the statute" [R. 108].

Finding of Fact No. IX.
[R. 64.]

This finding is challenged by appellants on page 25 of their brief. It finds that the number of the caravan cars brought into the state for the purpose of sale and subject to the imposition of a fee of $15 creates no traffic problem differing in any way from the traffic problems created by the movement of cars intrazone. In other words, when the volume of cars moved and the methods employed in moving them are considered, no problem of any difference is presented by the movement of those from which the fee is exacted as compared with that of the for-sale cars transported within a zone. This finding involves a considera-

tion and a weighing of the entire evidence, with the element of its credibility entering in. It involves a comparison of the movements of interstate and intrastate for-sale cars and their relation to traffic problems. The District Court obviously weighed the nature of the interstate movements as testified to by Asher [R. 105-107] and as revealed elsewhere in the evidence and concluded that the character of the problem presented by the local deliveries of for-sale cars as illustrated, for example, by the Murchison testimony [R. 77-78] was just as great. Another illustration is that of the intrazone deliveries of trucks as the movement is revealed by the stipulation [R. 81]. A substantial majority of the 150 moved per month are in units of two, connected by tow-bars. It was admitted by the witness Personius that "the pleasure vehicle is not a greater hazard than a truck towing a trailer on the same highway" [R. 91] and here two entire trucks are joined together in the delivery movement.

Findings of Fact Nos. X and XI.
[R. 64.]

These findings are not disputed.

Finding of Fact No. XII.
[R. 64.]

This finding is attacked in appellants' brief at pages 25 and 43. They assert that there is no evidence to support it. There is evidence in various instances throughout the record that the caravaning of cars does not create a traffic problem necessitating special policing of the caravans or create an additional hazard to passing traffic or other users of the highway. The witness Asher testified very clearly

concerning the orderly movement of the caravans and the care taken in the conduct of their movement and it was stipulated that the other plaintiffs would testify likewise. [R. 105-107.] That just ordinary traffic regulation is given was admitted by appellants' witness Captain Personius when questioned by Judge Wilbur [R. 92]. When asked whether his men were used at any particular place at the border stations his answer was "No." Judge Wilbur: "Not in assisting the caravan fleets in going to their places of destination, were they?" A. "No, just traffic duty from those movements." Judge Wilbur: "Just the general traffic duty?" A. "Yes, sir." In other words, the same duty as would be required and furnished for *any* appreciable volume of traffic on the highways. Again [R. 94] Personius plainly revealed this when he testified as follows:

> "Q. What would the patrolmen be up there for: would it be for the purpose of attempting to collect any fees which might be due the State of California, for automobiles transported into this state for the purpose of sale? A. No, sir. He is not allowed to collect fees on the highway.
>
> Q. Would it be just for the purpose of assisting in the handling of the traffic? A. Yes, sir; assisting and aiding in the handling of the general traffic."

The witness appeared to be quite inconsistent as to the purpose of putting on the men, whether it was to safeguard traffic or just because the Caravan Law had been passed [R. 93]. He stated that they were "put on for the enforcement of the Caravan Law, and the traffic," but when

asked the question, "Captain, the mere fact that the Caravan Act was passed in 1936 did not increase the traffic in that district, did it?" he replied "No. It did not increase the traffic." When asked "You know it decreased the traffic, do you not?" he a wered "I have no figures on that." But Chief Cato state t after the adoption of the Act in 1937 "the volume of such traffic materially decreased" [R. 159]. The confusion is obvious. Not the traffic problem but the passage of the Act led to the putting on of the men.

The finding that movements in fleets do not create undue wear or tear on the highways is supported by the testimony of Asher as to the manner of conducting such movements [R. 106-107]. There is a noteworthy absence of *any* evidence from defendants on this subject.

Finding of Fact No. XIII.
[R. 65.]

This finding is declared to be unsupported by evidence on page 27 of appellants' brief, and is dismissed without specific references to any of its eight paragraphs. They cover the findings of discrimination, denying of due process and equal protection, imposition of disproportionate and arbitrary and unfair fees, and unconstitutional burdening of interstate commerce. As these matters are discussed at length in this brief, with references to the evidence supporting them, appellees will follow the plan of appellants and not review here the various detailed portions of the evidence separately.

(2) A CLASSIFICATION CANNOT BE DISCRIMINATORY.

At the outset in their brief appellants stress the decision of this Court in *Continental Baking Co. v. Woodring,* 286 U. S. 352, 76 L. Ed. 1155, 52 S. Ct. 595, in support of their contention that the classification is proper. Appellees, of course, concede that the state has authority to impose reasonable restrictions upon the movements of motor vehicles, requiring compensation for its facilities and regulating the use of its highways to promote the public safety, as pointed out therein. And, as a general statement, it is well established that motor vehicles may properly be treated as a special class, for the reason pointed out by this Court:

> "because their movement over the highways is attended by constant and serious dangers to the public and is also abnormally destructive to the ways themselves."
>
> *Continental Baking Co. v. Woodring, supra,* at 366.

This is supported by numerous decisions, including *Hendrick v. Maryland,* 235 U. S. 610, 622, 59 L. Ed. 385, 35 S. Ct. Rep. 140; *Kane v. New Jersey,* 242 U. S. 160, 167, 61 L. Ed. 222, 37 S. Ct. Rep. 30; *Michigan Public Utilities Commission v. Duke,* 266 U. S. 570, 69 L. Ed. 445, 45 S. Ct. Rep. 191; *Interstate Busses Corp. v. Blodgett,* 276 U. S. 245, 72 L. Ed. 551, 48 S. Ct. Rep. 230; *Sprout v. South Bend,* 277 U. S. 163, 72 L. Ed. 833, 48 S. Ct. Rep. 502; *Hodge Drive-It-Yourself Co. v. Cincinnati,* 284 U. S. 335, 76 L. Ed. 323, 52 S. Ct. Rep. 144.

But the *Continental Baking Co.* case stressed by appellants definitely qualifies its recognition of the state's authority as follows:

> "Reasonable regulations to that end are valid as to intrastate traffic and, *when there is no discrimination against interstate commerce which may be affected,* do not impose an unconstitutional burden upon that commerce." (Italics supplied.)
>
> *Continental Baking Co. v. Woodring, supra,* at 366.

It is our contention that the interstate commerce of appellees is clearly discriminated against. They bring in cars from outside the state for the purpose of sale. They are subjected to the payment of the $15.00 fee. Others manufacture and assemble motor vehicles within the state and transport them there for sale in far greater numbers and in a manner not reasonably distinguishable with relation to considerations of safety. Still others move for the purpose of sale new cars brought into the state otherwise than upon their own wheels, and second hand cars originally purchased and used thereafter within the state. All these may transport their cars throughout all portions of the state without restraint or fee requirement,—just so long as they do not pass from the southern part of the state to the northern part, or *vice-versa.*

(3) The Rule as to Inclusiveness of a Classification.

We are familiar with the rule announced in the "firearms case" of *Patsone v. Pennsylvania,* 232 U. S. 138, 58 L. Ed. 539, urged by appellants as justifying the singling out for purposes of fee exaction of for-sale cars brought in from outside the state in fleet movement. We do not challenge the right to properly narrow down a classification, or insist that it possess "abstract symmetry," or that it need reach and control every evil or abuse. But we do contend that it must be free from discrimination and that its purpose and its operation be *bona fide* and have a proper relation to the subject treated.

The efforts of appellants to emphasize the objectional features of moving what are ordinary pleasure cars in fleet formation for purposes of sale totally ignore other numerous and notorious hazards which are continuously present. Any attempt to identify the fleet movements of cars for sale as the only or even the principal movements on the highways presenting difficulties is impeached by the results of common knowledge and the most casual observation, which furnish glaring instances of other far more troublesome uses of the highways. Instance the huge, lumbering, transcontinental moving-vans and the gigantic trucks and oil tankers,—all hauling trailers in tow; the great, rambling house cars and other cars hauling trailers with living quarters; the combination truck-and-trailer carrying from three to six automobiles on deck; all of which dangerously obscure the vision of other motorists and imperil traffic on literally every mile of

the highway, presenting hazards of grave danger at every curve and upon every grade,—besides contributing so substantially to the wear and tear of the highways. Other commonly known and constantly observed instances include automotive equipment of the most dangerous character,—that of the irresponsible, penniless, so-called "tin-can tourists" (commonly so designated because their equipment is notoriously make-shift and little more than tin held together with bailing wire), and that of poor refugees, sadly undernourished and distressed both physically and mentally, coming from impoverished or disaster-stricken areas elsewhere, seeking with grim determination to reach California by means of any conveyance possible to be kept together on four wheels,—with total disregard and in fact utter lack of means to have regard for anything approaching adequate brakes, necessary lights, or tires or mechanism safe for travel. These serious menaces to safety and to life itself are totally ignored in the diligent effort of appellants to emphasize the hazards and the evil of caravaning those particular cars which happen to be for sale.

We concede that, under the doctrine announced in the *Patsone* case, *supra,* the existence of such common instances does not necessarily invalidate the classification. But, as stated in the decision of the three-judge District Court in which the 1935 California Caravan Law was held to be discriminatory, such instances are

> "eloquent of the fact that the defining elements of the Caravan Act classification are not elements of the wrong aimed at and do not gather together the common malefactors but do arbitrarily and unreasonably embrace innocent actors."
>
> *Morf v. Ingels* (1937), 14 Fed. Supp. 922.

We believe the instances serve to indicate that something more than mere safety of travel was the concern of those striving to uphold the statute,—and that this renders the discrimination in exempting other for-sale cars moving within the state the more obvious.

(4) The Power to (1) Regulate, and (2) Impose Charges.

It is, of course, recognized that this Court has repeatedly held that the states possess broad powers both (1) to regulate traffic and (2) to impose charges upon those who use their highways. These powers have been reviewed by this Court in numerous decisions, of which the two following are typical. They were reviewed at considerable length, particularly the power to regulate, in *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U. S. 177. They were also clearly presented in *Interstate Transit v. Lindsey,* 283 U. S. 183, which had to do with the power to impose charges. We, of course, recognize the law to be as announced in those decisions.

In the *Lindsey* case, involving a statute imposing a privilege tax graduated according to carrying capacity, it was pointed out that while the state is free to levy occupation taxes and tax the privilege of doing an intrastate business without regard to whether the charge imposed represents merely a fair compensation for the use of their highways, the power to tax or levy fees when interstate commerce is affected is restricted to a charge predicated upon the use made of the highways. In other words, the charge made is "valid only if compensatory." *Interstate Transit v. Lindsey, supra,* at 190. It was held that while a state may not lay a tax on the privilege of engaging in interstate commerce, it may

impose even upon motor vehicles engaged exclusively in such commerce a charge, as compensation for the use of the public highways, which is a fair contribution to the cost of constructing and maintaining them and regulating the traffic thereon (at 185). As such a charge is a direct burden on interstate commerce it cannot be sustained unless it is levied only as compensation for the use of the highways or to defray the expense of regulating motor traffic. But it was clearly pointed out that the charge will not be sustained where it is found that it bears no reasonable relation to the privilege of using the highways, or that it is *discriminatory* (at 186).

In the *Barnwell Bros.* case, a "regulation" case as distinguished from the *Lindsey* "fee case," in which were involved certain limitations upon the width and weight of motor trucks, the power of the state to regulate is extensively reviewed, and the reluctance of this Court to substitute its judgment for that of the legislative body in determining proper regulatory measures is emphasized. As therein stated this Court has in some instances sustained the exercise of this power to regulate even where it has burdened or impeded interstate commerce,—but only where there was *no discrimination.* It is recited that weight limitations lower than those imposed in that case had been upheld, but they were weight limitations *applied alike* to motor traffic moving interstate and intrastate; that restrictions favoring passenger traffic of the carriage of interstate merchandise by truck had been similarly sustained; and that the exaction of reasonable fees for the use of the highways had been applied in numerous instances, but always where *applicable to all alike.* The Court points out that in each case the regulation imposed caused some burden on interstate com-

merce, but held that so long as the state action *did not discriminate* it was valid, as an inseparable incident of the authority.

The decision is notably forceful in its statement with regard to *discrimination,* emphasizing throughout that discrimination "whatever its form or method" is prohibited, that discrimination will invalidate any attempt at regulation. May we emphasize the following pertinent quotation:

> "The commerce clause, by its own force, *prohibits discrimination against interstate commerce, whatever its form or method,* and the decisions of this Court have recognized that there is scope for its like operation when *state legislation nominally of local concern is in point of fact aimed at interstate commerce,* or by its necessary operation is a means of gaining a local benefit by throwing the attendant burdens on those without the state." (Italics supplied.)
>
> *South Carolina State H. Dept. v. Barnwell Bros., supra,* at 185, 186.

In applying this definition of the effect of the commerce clause to the authority of the state, discrimination is again emphatically prohibited:

> "The nature of the authority of the state over its own highways has often been pointed out by this Court. *It may not, under the guise of regulation, discriminate against interstate commerce.* But 'In the absence of national legislation especially covering the subject of interstate commerce, the state may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use *applicable alike to vehicles moving in*

interstate commerce and those of its own citizens.' Morris v. Duby, 274 U. S. 135, 143, 71 L. ed. 966, 971, 47 S. Ct. 548. This formulation has been repeatedly affirmed, Clark v. Poor, 274 U. S. 554, 557, 71 L. ed. 1199, 1200, 47 S. Ct. 702; Sprout v. South Bend, 277 U. S. 163, 169, 72 L. ed. 833, 836, 48 S. Ct. 502, 62 A. L. R. 45; Sproles v. Binford, 286 U. S. 374, 389, 390, 76 L. ed. 1167, 1179, 1180, 52 S. Ct. 581; *cf.* Morf v. Bingaman, 298 U. S. 407, 80 L. ed. 1245, 56 S. Ct. 756, and never disapproved. This Court has often sustained the exercise of that power although it has burdened or impeded interstate commerce. It has upheld weight limitations lower than those presently imposed, *applied alike to motor traffic moving interstate and intrastate.* Morris v. Duby, 274 U. S. 135, 71 L. ed. 966, 47 S. Ct. 548, *supra;* Sproles v. Binford, 286 U. S. 374, 76 L. ed. 1167, 52 S. Ct. 581, *supra.*" (Italics supplied.)

South Carolina State H. Dept. v. Barnwell Bros., supra, at 189.

The decisions in the *Lindsey* case and the *Barnwell Bros.* case demonstrate the limitations definitely recognized and applied by this Court in the exercise by states of their power to (1) make regulations and (2) impose charges. As regards charges, they can be "valid only if compensatory" and they cannot be *discriminatory.* As regards regulations, they must not only be reasonable and have the proper relation to the subject matter, but there can be *no discrimination* against interstate commerce, "whatever its form or method." States may not "under the guise of regulation" violate the commerce clause by discriminating against interstate commerce. *Barnwell* case, *supra,* at 185, 189.

(5) THE CHANGES MADE IN THE FORMER LAW DO NOT REMOVE THE DISCRIMINATION.

The Caravan Law enacted in 1937 repealed the statute of 1935 and set up a new act which, as pointed out in appellants' brief (pp. 3-5), made two changes; first, it split the fifteen dollar ($15.00) fee in half, allocating one-half to the support of the Department of Motor Vehicles and the other half to the State Highway Fund, and second, it attempted to overcome the charge of discrimination against interstate commerce by setting up two zones within the state and charging a like fee for any movements between such two zones,—no fee being required for any movements within either one of the said zones.

It is our contention that this attempt did not remove the grounds for the charge of discrimination and that it amounts to little more than a subterfuge to cover up the real result. It is obvious that the change injected by the division of the entire state into two so-called zones was made in the endeavor to bring the statute within the case of *Morf v. Bingaman*, 298 U. S. 407. It was sought thereby to be able to contend that the law applied to intrastate as well as interstate traffic. In the *Morf v. Bingaman* case, which had to do with the New Mexico statute, the Court pointed out that

> "the statute *applies alike* to *all* automobiles transported for sale, whether moving intrastate or interstate" (at 410). (Italics supplied.)

The present Caravan Law does not "apply alike to all automobiles transported for sale," but in all cases except where a movement is made from the northern to the southern part of the state, or *vice versa*, no permit is

required. No fee is charged by the statute for *any* movement entirely within the state.

Appellees are engaged in the business of bringing cars purchased elsewhere into the State of California and offering them for sale. Naturally, this business presents competition, and unwelcome competition, to those selling new cars in California as well as to those marketing second-hand cars which have been purchased and used in that state.

The effect upon the appellees of the imposition of this tax or fee is highly damaging, if not destructive to their business. According to the testimony of the appellee Paul Gray, the net profit which is made on each car transported into California for sale is approximately ten dollars ($10.00) [R. 108]. It was stipulated that the rest of the plaintiffs would testify to the same effect [R. 109]. There is no evidence to the contrary.

No fee or charge of this character is required with respect to the transportation of any other motor vehicles in California unless they cross a boundary line which divides the state approximately in two. There are in California several factories manufacturing motor vehicles and numerous plants manufacturing either the entire truck or automobile or portions thereof and assembling the remainder. The numbers of cars moved from these plants to distributors or dealers is referred to in the various affidavits of representatives of the automobile manufacturing corporations [R. 121, 127, *et al*]. These numbers are substantial and greatly exceed the numbers of for-sale cars driven into the state. No restriction is imposed upon the transportation on their own wheels of either new or second-hand cars for sale, unless they cross this boundary line drawn approximately midway

across the state. They are free to transport cars for sale in any manner they wish throughout large areas of California, areas which are much larger than many entire states of the Union.

The trial court was plainly not impressed with the sincerity of the attempt by the creation of two zones to make it appear that movement of for-sale cars entirely within the state receive the same treatment as those brought in from without the state. It found that the "interzone moving is negligible", [R. 38] and that "the attempt is plainly ineffectual" [R. 41]. Appellants' own evidence robbed the zoning attempt of any effectiveness. In the testimony of their witness Personius, he stated that in the territory with which he was familiar "the fleet movements were entirely interstate" [R. 82]. In the affidavit of Ray Ingels, the Director of the Department of Motor Vehicles, he refers to any fleet interzone movements as "occasional movements" [R. 113]. In Todd Bates' affidavit he qualifies his statement as to any such movements by limiting them to "certain seasons of the year" and "under certain circumstances" [R. 156].

Certainly this is a long way from making the provision apply alike to all persons moving automobiles for sale throughout the state, and results in penalizing the interstate commerce engaged in by appellees in favor of others who may move their for-sale cars without restriction.

We cannot escape the conviction that the Caravan Law does precisely what the *Barnwell Bros.* case held to constitute a violation of the commerce clause, that it is "state legislation nominally of local concern in point of fact aimed at interstate commerce," and that it "by its necessary operation is a means of gaining a local benefit by throwing the attendant burdens on those without

the state." *South Carolina State H. Dept. v. Barnwell Bros., supra,* at 186.

Whether fleet movements entirely within the State of California have been engaged in extensively in the past or not, in order to make the statute constitutional it must apply like regulation to any such traffic as may exist or may develop. As stated in the *Barnwell Bros.* case, "it must be applicable alike to vehicles moving in interstate commerce and those of its own citizens" (at 189). It cannot say that all present or future automobiles moved for sale within Southern California or Northern California are at entire liberty to proceed as they please without the payment of any fee, and at the same time say that one brought across the state line from Nevada or Arizona shall be charged fifteen dollars ($15.00). "It may not, under the guise of regulation, discriminate against interstate commerce." *South Carolina State H. Dept. v. Barnwell Bros., supra,* at 189.

The decision of the three-judge District Court agreed with appellee's contention that the re-enacted statute was still discriminatory even after the change made in 1937 and granted a permanent injunction against its enforcement. That Court held the attempt of the legislature to overcome the charge of discrimination against the former Caravan Law (California Statutes 1935, p. 1453) by providing for two zones within the state to be *"plainly ineffectual"* in its opinion. It stated that the creation of two zones in the state *"is highly suggestive of an effort to create a distinction where none in fact exists."* It held that the provision exacting fees from for-sale cars driven in from outside the state is *"nothing but discriminatory"* [R. 40, 41]. Appellees submit that such discrimination cannot be sanctioned under the constitutional safeguards.

(6) THE STATUTE VIOLATES THE COMMERCE CLAUSE BECAUSE IT PRESCRIBES NOT THE "MANNER OF USE" BUT THE "PERSONS BY WHOM THE HIGHWAYS MAY BE USED."

Upon careful analysis the Caravan Law is clearly invalid when subjected to the test under which this Court held a statute of the State of Washington unconstitutional as offending the commerce clause. *Buck v. Kuykendall,* 267 U. S. 307. There the statute prohibited common carriers for hire from using the highways by auto vehicles between fixed termini and over regular routes without having first obtained from the director of public works a certificate that public convenience and necessity required such operation. Upon applying for such a certificate and alleging willingness to comply with all applicable regulations the plaintiff was refused, the ground of refusal being that under the laws of the state a certificate could not be granted for any territory already being adequately served by the holder of a certificate. In defense of the statute the usual arguments were made: *viz.,* that the highways belong to the state, that it may make provisions appropriate for securing the *safety* and convenience of the public in the use of them, that with the increase in number and size of the vehicles used on the highways both *the danger and the wear and tear grew,* that to exclude unnecessary vehicles promotes both safety and economy and that state regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by Congress dealing specifically with the subject.

This Court held the argument unsound, emphasizing that the statute determined "not the manner of use but the persons by whom the highways may be used" (at

315). We submit that the Caravan Law does the same thing. It in effect defines the term "caravaning" to include *only* those vehicles transported for the purpose of selling or offering for sale. [Appendix A, p. 75.] It denies the use of the highways for such purpose to all persons unless a special permit is obtained, for which a fee is charged and collected "as a condition precedent." [Appendix A, p. 76.] It does not determine or prescribe the *manner of the use* of the highways. It merely *limits their use to certain persons.* It restricts only those who are to sell or offer for sale their cars.

Under the Caravan Law any number of automobiles may be transported and brought into California, and without any limitation or restriction—so far as its provisions are concerned—just so long as the purpose in transporting them is not that of selling or offering for sale. They may be taken there in any number, and in fleet or any other manner or formation, either for purposes of demonstration, or for purposes of hiring, or for the purpose of being used in any conceivable undertaking involving either pleasure or business,—and be entirely exempt from the payment of this fee or tax, just so long as they are not to be sold or offered for sale within ninety days.

The effect of the statute is thus to prohibit the use of the highway to some persons, while permitting it to others using it for the same purpose and in the same manner, *viz.,* for the purpose of transporting automobiles.

The legal result thus brought about is obvious—and startling as well—when one reflects that there is nothing whatever to prevent fleet movements, or movements of any other kind or formation, in any one of numerous instances where the purpose served may in-

volve far greater hazards to safety than that so diligently sought to be restricted here. The caravan becomes a menacing cavalcade,—or even a juggernaut. A few definite and pertinent instances will illustrate this clearly. Such transportation of cars may include great group-travel movements of delegates to attend conventions, or the journeying together of large numbers to political gatherings, or the making of organized pilgrimages by religious or fraternal orders, or mass migrations of workers seeking employment or of those banded together and proceeding to a destination for purposes of colonization. Any one of the foregoing movements may very readily reach vastly greater proportions than a movement of ordinary automobiles which, it so happens, are to be sold or offered for sale at their destination,—and be much more highly integrated, cohesive, unwieldy, unruly and menacing to other travel. And yet the term "caravaning," as defined in the statute, does not restrict such movements in the slightest manner, or require any special permit or the collection of any fee therefor.

Viewed in the light of these considerations it is plain that the statute unconstitutionally burdens interstate commerce. The long established principle which is here violated is too well known to require voluminous citation, but the decision of this Court in *Buck v. Kuykendall, supra,* holding unconstitutional the statute of the State of Washington which had a like effect is so apt that it is here quoted:

> "It may be assumed that section 4 of the state statute is consistent with the 14th Amendment; and also, that appropriate state regulations, adopted primarily to promote safety upon the highways and conservation in their use, are not obnoxious to the

> commerce clause, where the indirect burden imposed upon interstate commerce is not unreasonable. (Citing a case.) *The provision here is of a different character.* Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the *prohibition of competition.* It determines not the manner of use, but the persons by whom the highways may be used. *It prohibits such use to some persons while permitting it to others for the same purpose* and in the same manner. * * * Thus the provision of the Washington statute is *a regulation, not of the use of its own highways, but of interstate commerce.* * * * Such state action is forbidden by the commerce clause." (Italics supplied.)
>
> *Buck v. Kuykendall, supra,* 315, 316.

Precisely so in this case. Identically the same use of the highways, "for the same purpose and in the same manner," *i. e.,* the operation of cars in fleet movements, is permitted to some, but is denied to others,—to those particular persons, and those only, who have to move cars in the conduct of their business to get them to a destination for the purpose of selling them. The statute is directed at a particular business. It is "a regulation, not of the use of the highways, but of interstate commerce." As found in the *Buck v. Kuykendall* case, the primary purpose is *"the prohibition of competition".*

It is not enough for appellants to attempt to waive this vital defect aside by saying that classifications need not be all-inclusive or reach every evil or abuse that may arise. Here, the attempt to determine "not the manner of use, but the persons by whom the highways may be used" is too clearly apparent. It falls directly within the rule in the *Buck v. Kuykendall* case.

(7) THE CLASSIFICATION DENIES EQUAL PROTECTION, BEING AN ARBITRARY AND DISCRIMINATORY ATTEMPT WHERE NO REAL DISTINCTION EXISTS.

It is well known that a state has a broad discretion as to classification in the exercise of its power of regulation. But, as has been repeatedly announced, there is a limitation upon this exercise. It cannot be so arbitrarily indulged as to result in discrimination. This rule was invoked in no uncertain manner in *Smith v. Cahoon,* 283 U. S. 553. We believe it applies with equal force here, and that so tested the statute must fall. In that case this Court held:

> "But the constitutional guarantee of equal protection of the laws is interposed against *discriminations that are entirely arbitrary.* In determining what is within the range of discretion and what is arbitrary, regard must be had to the particular subject of the state's action. In the present instance the regulation as to the giving of a bond or insurance policy to protect the public generally, in order to be sustained, must be deemed to relate to the public safety." (Italics supplied.)
>
> *Smith v. Cahoon, supra,* at 566, 567.

There the Florida statute provided for certain requirements being met by "auto transportation companies," among such requirements being the furnishing of a bond for the protection of the public in the event of injury to persons or damage to property. In defining the term "auto transportation company" an exception was made of those engaged exclusively in the transportation, among other things, of agricultural, horticultural, dairy or other

farm products. In holding that the statute violated the guarantee of equal protection of the laws the decision state :

> "But in establishing such a regulation, there does not appear to be the slightest justification for making a distinction between those who carry for hire farm products or milk or butter, or fish or oysters, and those who carry for hire bread or sugar, or tea or coffee or groceries in general, or other useful commodities."
>
> *Smith v. Cahoon, supra,* (at 567).

The Court held that so far as the statute was designed to safeguard the public with respect to the use of the highways the discrimination made was

> "wholly arbitrary and constituted a violation of the appellant's constitutional right. 'Such a classification is not based on anything having relation to the purpose for which it is made' " (at 567).

So here likewise there is no valid ground for drawing a distinction as to a pleasure car, or any motor vehicle, merely because it is transported for purposes of sale, such as is necessary to uphold the attempted classification as against the charge of denial of equal protection of the laws. Even where the cars are brought in in fleet movements or in caravans there can be no possible distinguishing factor inherent in such cars themselves or in the movements of such cars, so far as the element of safety is concerned, predicated upon the mere fact that they are for sale or are to be offered for sale. It is just as useful a purpose and just as safe to transport a car which is to be offered for sale at its destination as it is to transport the identical car with the object of putting it to some other use at its destination. De-

fendants' own witness Personius admitted on cross-examination that "the mere fact that the pleasure vehicle may be for sale does not increase the hazard on the highway." [R. 92.] The transportation of a fleet of pleasure cars to be sold upon reaching the point where they come to rest cannot conceivably have any greater inherent or identifying *relation to safety* of traffic on the highway than the transportation of a fleet of taxi-cabs (by no means not a rare practice) to be put to the use of transporting passengers upon reaching the destination. Just as in the *Smith v. Cahoon* case there was found to be no justification for making a distinction between milk and butter on the one hand and bread and sugar or other groceries on the other, so in this case equal protection of the laws is denied when the attempt is made to draw a distinction between an automobile for sale and one for hire, or for pleasure,—or for any other lawful use. It can be nothing else but an arbitrary and invalid attempt at classification.

There certainly is no inherent quality in an automobile which is to be sold which makes it different or distinct from one which is not. Where is there any natural, intrinsic, real or substantial distinction such as is required as a basis for valid classification?

Southern Ry. v. Greene, 216 U. S. 400, at 417;
Darnell & Son v. Memphis, 208 U. S. 113, at 120.

They both look the same, run the same, and possess the same parts and mechanism, with a probable advantage —so far as safety is concerned—in favor of the one which is to be offered for sale. Yet the Caravan Law limits its provisions to those moved for the purposes of sale or offering for sale. What its purpose should be, if

safety be the consideration or object, is the regulation of the *operation* of motor vehicles in fleet or convoy formation, and what the statute should do and needs must do if it is to achieve that purpose is to embrace all such *operations* within its prohibition, rather than attempt to designate as the object of its regulation something which immediately precipitates discrimination, something having no relation *per se* to the purpose of safety, *viz.*, the for-sale car. As a matter of fact, all cars driven on the highways are offered for sale or sold at one time or another. But if the consideration or object be not so much safety as an ulterior and primary one of handicaping, penalizing or destroying a particular business enterprise—lawful though it may be—then no more apparent or thinly-veiled method could be adopted than that of singling out and arbitrarily designating one specific person—the person who is to offer his car for sale, and requiring him to purchase a permit. The Caravan Law addresses itself solely to the person. [Appendix A, p. 76.] He may use the highway as freely as anyone else—just so long as he does not offer the car he is moving for sale. Is not this Court's pronouncement in *Buck v. Kuykendall, supra,* highly pertinent and conclusive?

> "Its primary purpose is not regulation with a view to safety or to conservation of the highways, but *the prohibition of competition.* It determines not the manner of use but *the persons by whom the highways may be used.*" (Italics supplied.)
>
> *Buck v. Kuykendall, supra,* at 316.

Here the statute has not one word to say about the manner of use of the highways. It simply prescribes by whom it cannot be used without the payment of a fee. It singles out one person—and chooses to make that one

person the man who is to offer his car for sale when he reaches his destination. And in spite of anything that can be said, that person *per se*, and his car likewise, is just as much entitled to make use of the highway as any other person or car, and under the same conditions and with *equal protection* and rights under the law. The same situation exists here as was frowned upon in the *Smith v. Cahoon* case.

There can be no justification for making a distinction between him and his car, as "bread and sugar," on the one hand and another person and his car, as "milk and butter," on the other; when as to individuals and cars there exists no real difference whatsoever. The attempted classification "is not based upon anything having relation to the purpose for which it is made." (*Smith v. Cahoon, supra,* at 567.)

It is only when the manner of use and practices that may be followed come in that any basis for classification whatever can be claimed. The statute imposes no regulation upon these, makes not even the slightest reference to them. It falls definitely within the rule laid down in the *Buck v. Kuykendall* case. Hence it is fatally defective when thus tested.

And even though it be claimed that the intent of the statute as interpreted by those seeking to defend it is to regulate traffic, any attempted classification is plainly invalid as arbitrary and discriminatory under the *Smith v. Cahoon* case. We are perfectly aware of the attitude often expressed, that no classification need be all-inclusive, that it need not approximate perfection. But this Court and the state tribunals as well have definitely and positively refused to sustain such an attenuated attempt to arbitrarily single out and penalize a particular business enterprise.

(8) THE ATTEMPTED DISTINCTION BETWEEN INTERSTATE AND INTRAZONE MOVEMENTS IS DISCRIMINATORY.

Let us now compare the number and the method of transportation of for-sale cars driven interstate with those driven intrazone.

The number of cars brought in to California for sale on their own wheels was found by the District Court to be approximately 15,000 annually. It was stipulated that from January 1, 1935, to November 29, 1935, (approximately eleven months) there were 14,000 new and used passenger automobiles caravaned into California for the purpose of sale and that the number so caravaned "since that time per year is approximately in the same proportion." [R. 81.] This figures slightly over 15,000. This number is subjected to the $15.00 fee or tax by the Caravan Law. (There is no evidence as to the number of such cars, if any, which move from one zone to the other within the state, *or* that any fee is exacted or effort made to enforce the statute with relation thereto.)

The total number of cars transported for sale entirely within the two zones is not available from the evidence. These are specifically exempted from the operation of the statute. [Appendix A, p. 78.] The District Court, in its opinion, [R. 40] stated that "at least five times that number," *i. e.*, five times the 15,000 brought in from outside the state, were so exempted. Let us see if that proportion is excessive. The auditor for one of the firms delivering for-sale cars for the Chrysler factory, testified that they drove "approximately 1500 to 1700 per month"—cars for sale on their own wheels in Zone 1, (about 20,000 per year), and that they trucked "a little less than we drive. Possibly 1500 or 1600." [R. 77,

78.] The district manager of Pacific Motor Trucking Company, which engages its services to the Southern California Division of the General Motors Corporation, stated in his affidavit [R. 119-121] that their drive-away deliveries in Southern California (Zone 1) for the first six months' period of 1937 was 10,595 (or about 21,000 annually). These refer to for-sale cars transported from only two plants manufacturing new cars, and only within Zone 1. It was stipulated that 250 new Studebaker automobiles per month (3,000 annually) use the highways in Zone 1 for transportation for purpose of sale [R. 80] and that 100 new International trucks are transported monthly in Zone 1 on their own power and in addition 50 per month from San Pedro to Los Angeles, a total of 150 per month [R. 81]. The witness Miske testified that he transported for sale about 250 or 300 new trucks per month (over 3,000 annually) [R. 79]. No figures are given as to used cars moved for sale, nor as to movements in Zone 2. Some additional figures as to movements of for-sale cars in Zone 1 are given in the affidavits of Holm [R. 121] and Cron [R. 127]. Although other affidavits from representatives of De Soto, Plymouth, Chevrolet, Hudson, Dodge, Chrysler, Cadillac and La Salle distributors of automobiles and trucks are included [R. 127, 131, 133, 135, 136, 147, 149], relating to the movements of their cars, no amounts are given. It is clearly evident that the total of all new automobiles and trucks manufactured in California and those assembled there, together with used cars and trucks, which are transported on the highways for sale within both Zone 1 and Zone 2 reaches a very substantial figure, and that the District Court's statement that they amount to "at least five times" the number of cars driven in for sale from outside the state is a conservative one. Almost

three times as many *new* cars are moved in this manner by only two concerns, and within one of the zones only. [Testimony of Murchison, R. 77; and affidavit of Shaw, R. 119.]

Thus at least five times as great a movement is expressly exempted by the provisions of section 8 of the statute. [Appendix A, p. 78.] Let us inquire as to what kind of a movement the intrazone movement is. To begin with, it is conceded that these cars, like the others, are moved for the purpose of sale, or offering for sale. They are the for-sale cars to which those driven in from outside the state present competition. They make use of the privilege of the highways just as the others do. Appellants have urged that they are moved largely in the "metropolitan areas." If this be so it but emphasizes the substantial contributing factor they present to the congestion of crowded districts.

As a matter of fact, the evidence reveals movements of substantial distances. By appellants' own analysis (App. Br. p. 34), presumably that of a typical situation and one tabulated from an affidavit filed in their behalf [R. 121, *et seq.*], in a movement of 130 cars during a two months' period 22.3 per cent of the cars were driven over 100 miles within Zone 1 and 11.2 per cent over 150 miles. This was after deducting 13 for-sale cars which were driven from Long Beach, California, to Arizona and Nevada—those cars, because for-sale cars driven outside the state, being subject to the payment of the tax. (They were being delivered in the same way and for the same purpose as those within a Zone, but when they crossed the state line a tax was required. Is this not another example of the violation of the rule announced in the *Barnwell Bros. case*—that regulations must be

"applicable alike to vehicles moving in interstate commerce and those of its own citizens" and that the state "may not, under the guise of regulation, discriminate against interstate commerce." *South Carolina State H. Dept. v. Barnwell Bros., supra,* at 189.)

In several of the affidavits [R. 132, 134, 136, 138] the stereotyped statement is made that the "deliveries are in most cases effected within a radius of 75 to 100 miles." If the movements be confined to "metropolitan areas" then the resultant objectionable effect upon congestion is plain. If they be transported for considerable distances then it becomes more and more difficult to distinguish between them and the imported cars complained about. The intrazone deliveries of for-sale cars are made in fleet movements also, but are limited to three or four cars [R. 77, 134, 137, 155]. With the exception that the deliveries of local cars are made with regularly employed drivers rather than those only casually employed, is it not almost entirely a question of degree as to which movement may be the more objectionable—with the factor of the movement of local cars in far greater numbers weighing in favor of the imported cars?

In addition to this substantial contribution to congestion on the part of the local for-sale car deliveries by reason of their far greater numbers, the evidence reveals that in the case of those delivered by truck (not included in the above figures), as distinguished from those driven on their own wheels, as many as six automobiles are loaded on a truck unit sixty feet in length and delivered in that manner—three on the front portion, two on the trailer and one on the truck over the driver's cab [R. 77]. The witness Murchison testified that the firm for which he is auditor trucks "1500 or 1600" cars on an average

per month (about 19,000 per year) in Zone 1 alone, delivering the output of but one factory [R. 77, 78]. None of this evidence was refuted. It can scarcely be questioned that such a practice presents traffic menaces of a very real character.

Again we say that while the failure of the statute to embrace and regulate *all* objectionable practices of delivering for-sale cars may not necessarily and of itself invalidate it, the above facts are highly significant; and, related to the discrimination which results under the statute, indicate a willingness or desire to ignore hazards to safety in the movements of local for-sale cars, and recognize and regulate others which, it is claimed, do not exist in the movements of the favored class,—thus emphasizing the discrimination in both the *purpose* and *effect* of the statute. As a matter of fact, the attempt to claim the distinction is defeated by acknowledged conditions. The District Court held that "Altogether, it is difficult to distinguish between the two systems of transportation" and that the statute is "nothing but discriminatory." [R. 40, 41.]

May we here comment generally upon the volume of appellants' evidence in the record as it exists with the inclusion of the affidavits? We realize that the record is replete with affidavits filed after the trial in behalf of the appellants. These affidavits, sixteen in number and covering some fifty-six pages, include those of public officials, representatives of local factories and of manufac-

turers of motor vehicles, officers of local motor car dealers' associations, and others,—practically all being made by those having a highly personal interest in the outcome. It was stipulated that these affidavits might be regarded as evidence. Studied, prepared statements of this character are naturally of the most pronounced self-serving type and effective challenge of them is extremely difficult. There is no opportunity afforded for cross-examination of the affiants as witnesses or of testing their credibility in numerous ways, and the practice is in many instances most unsatisfactory. Yet appellees are not awed or dismayed by either the volume or the vehemence of the statements contained in these affidavits. Nor was the three-judge trial court. The revealing of a manifest discrimination of a substantial and arbitrary character was not escaped by the effort to justify the statute. Without impugning the personal veracity of any affiant, let it be said that the element of credibility, when the content of the affidavits was weighed in relation to the provisions and effect of the statute, very obviously became an important factor in the Court's mind. Not so much the bare statements, but more pertinently the intent and the effect stood out. The discrimination and the denial of equal protection became the more apparent. The District Court held that the creation by the statute of the two zones "is highly suggestive of an effort to create a distinction where none in fact exists," and that the attempt to absolve the statute from the charge of discrimination and to bring it within the *Bingaman* case was "plainly ineffectual." [R. 40, 41.]

(9) THE DISCRIMINATION BETWEEN APPELLEES' CARS DRIVEN IN SINGLY AND FOR-SALE CARS DRIVEN SINGLY WHOLLY WITHIN THE STATE INVALIDATES THE STATUTE.

(a) *The Stipulation as to Single Car Movements.*

The effort is made by appellants in their brief (pp. 6, 44, 45), to foreclose any consideration of the invalidity of the classification by reason of the fact that the statute, by including cars moved *singly* and not in caravan or fleet formation, unlawfully discriminates against those driven in from outside the state, and in favor of local for-sale cars moved in precisely the same manner. In contending that this character of discrimination cannot be urged in this case they assert that the evidence cannot be construed to support any claim that appellees so transport any of their cars. Their position is unsupportable and the contention is manifestly unfair, as will be pointed out.

It is conceded that, under the decision in *Morf v. Bingaman, supra,* a party, in order to be in a position to claim discrimination, must fall within the class discriminated against (at 413). We do not contend otherwise.

It is true that appellees' witness Asher did testify only as to caravan movements. [R. 105, 106.] The purpose of his testimony was clearly only to describe the manner of making such movements,—as the testimony of appellees' witness Gray was confined almost entirely to one purpose—that of explaining, from a business point of view, the practice of bringing in outside cars for purposes of sale in California, the small profits to be made and the damaging effect on the business of the 1937 statute. [R. 108.]

But at the very outset of the case this question was settled by a definite stipulation. [R. 72.] It was stipulated that 80 per cent of the cars which come into California for the purpose of sale come in convoys of two or more cars, *i. e.*, in caravan or fleet movement; and that twenty per cent come in as *single unit* cars—not in combination or in company with any others. [R. 72.] This stipulation applied to *all* cars brought into California for sale, including those of appellees *as well as all others.* The purpose of the stipulation was to have a *bona fide* agreement as to the facts so that an adjudication could be obtained as to the existence of discrimination, *discrimination of three different kinds*—first, that between those cars driven into the state singly for the purpose of sale and those driven in from outside the state singly for purposes other than sale; second, that between those driven in singly for the purpose of sale and those driven solely within the state for like purpose; and third, discrimination resulting from the attempt to create a distinction between the entire interstate movement of for-sale cars (including those in fleet formation) and the movement of all for-sale cars taking place wholly within the state. (The first named of these three kinds of discrimination is shown under Point II (2), post p. 69.)

There was no other purpose for this stipulation than the creation of these issues and the bringing about of their determination in this action. Up to the time of the filing of appellants' brief, not the slightest intimation of treating it otherwise had been given. For appellants to now assert that the stipulation constitutes only "general statistics" of the caravan traffic (Brief p. 44), certainly must be regarded as a futile effort to evade the issue, and we submit that it subjects them to criticism for

improperly attempting to foreclose appellees from obtaining the adjudication sought. The stipulation could have no other effect than to describe and identify by proportion of volume the character of movements of for-sale cars from without the state for the purpose of ascertaining whether discrimination is present; otherwise it would be idle, meaningless and have no bearing whatsoever upon the case or its issues.

As the stipulation covered *all* for-sale cars driven into California, it must of necessity include those of appellees, and the percentages agreed upon apply to the movements of appellees' cars the same as to all other such cars. We submit that it cannot be regarded otherwise.

In appellees' brief the attempt is also made to evade the effect of this stipulation by stating that it was withdrawn (Brief p. 45). Let us examine the record as regards this situation. Counsel for plaintiffs offered a definite stipulation to which counsel for defendants replied:

> "Mr. Palstine: We will stipulate that the witnesses for the plaintiffs, if called, would so testify." [R. 72.]

Following this there were questions asked by members of the Court seeking to definitely understand the application of the percentages, and these questions were answered by counsel for both parties. [R. 72, 73.] After this discussion counsel for the plaintiffs stated that as there seemed to be a question on the stipulation he was willing to withdraw it and put a witness on the stand. [R. 74.]

The Court clearly ignored the suggestion and Judge Cosgrave then asked a further question, stating his understanding, and this was agreed to by Mr. Palstine. The following definite question was then asked by Judge Cosgrave:

> "Judge Cosgrave: Twenty per cent comes in singly, and each car in charge of an individual driver, is that right?
>
> Mr. Palstine: Yes." [R. 74.]

We submit that there can be no possible question as to the understanding of the Court relative to the number of cars driven in singly. Following this there was other discussion between the Court and counsel, ending with the following statement of Judge Cosgrave:

> "Judge Cosgrave: All right." [R. 75.]

There was no further expression from the Court, with nothing but silent acquiescence on the part of the two other judges as to the withdrawing of the stipulation, there was no dissent expressed by Mr. Palstine as to its content, and it is clearly obvious that the Court at that stage understood its effect. While the witness Manford was then placed upon the stand his testimony related only to his experience at one of the stations and clearly did not affect or supersede the all-inclusive, definite stipulation,—nor was it so regarded by the Court.

The stipulation plainly established the fact that twenty per cent of all for-sale cars coming into California on their own wheels are driven in singly. Its effect cannot be other than that of a definite understanding and agreement that the same percentage applies to the for-sale cars brought into California by the plaintiffs in the action.

(b) *The Application of the Statute to Single Care Movements Renders It Discriminatory.*

What has been said before in this brief relative to discrimination against all motor vehicles driven into California for the purpose of sale applies with special emphasis and increased force in the case of single car movements. Here the automobile taxed is just the same as that of any other motorist on the highway. It is proceeding alone, not in company or in combination with any other cars, with the sole difference that, at its destination, it will be sold or offered for sale. Contrasted with this, those cars already in California which are for sale may be driven at will and without fee or permit throughout any area in either Northern or Southern California.

The burdening of interstate commerce and the denial of equal protection here become greatly aggravated. Just as in the *Smith v. Cahoon* case this Court condemned as "wholly arbitrary" the attempted exemption from the classification of those engaged in the distribution of farm products, so here the attempted exemption of identically the same kind of cars driven anywhere within the area of one-half the State of California can be nothing but a violation of the guaranteed constitutional right. Again we emphasize that there can be no justification for making a distinction against the car originating without the state, as "bread and sugar," and in favor of the car already in California, as "milk and butter."

The decision of *Buck v. Kuykendall, supra,* likewise applies with exaggerated force to the single car movement. The language looms up with controlling authority.

> "Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition" (at 316).

Just as in the *Buck* case, the Caravan Law when considered and applied with respect to single for-sale car movements "determines not the manner of use, but the persons by whom the highways may be used" (at 316). It denies the use to those driving a for-sale car into California from without the state unless a fee is paid.

Appellants state (Brief pp. 53-56) that even if they admit that by reason of the stipulation twenty per cent of the cars of appellees are driven into California singly, still the classification is valid under principles announced in *Purity Extract & Tonic Company v. Lynch,* 226 U. S. 192, and *Euclid v. Ambler Realty Company,* 272 U. S. 365. We take it that by this they mean that all of the transactions covered need not be objectionable but that innocent ones may be included in a regulation if it is necessary to accomplish the purpose and obtain the object aimed at. We are familiar with the general rule which has recognized and condoned, as necessary and incidental, violations of rights in isolated cases. However, this rule does not extend so far as to sanction the exercise of regulatory powers where there is a *direct* and *substantial* infraction of guaranteed rights, or where the provision is palpably arbitrary and does not bear the necessary relation to a proper purpose. The point here is that if the movement of cars in a certain manner or in certain formations

is objectionable and merits and requires regulation, this can be accomplished by proper definition and application of the regulation. If this be the evil aimed at it is totally unnecessary to include in a classification to accomplish the purpose cars driven singly and in a manner differing not at all from movements of other cars which are exempted. To arbitrarily attempt to adopt such a classification as that of "cars for-sale," without characterizing the method or manner by which these cars can be transported can, we submit, be nothing less than discriminatory and violative of the rights guaranteed by the constitution.

(10) APPELLANTS' ARGUMENT DEFENDING THE DESCRIPTION OF FOR-SALE CARS AS A CLASS AS AGAINST A DESCRIPTION OF THE MOVEMENT OF CARS FOR CLASSIFICATION PURPOSES IS UNSOUND.

Appellants urge the argument that the entire volume of traffic charged a fee is properly included because the distinguishing and common attribute of this traffic is the caravan or fleet movement of "a large proportion" of the vehicles. (App. Br. p. 46 *et seq.*)

There are several answers to this line of argument. First, this Court has declined to sanction attempts to apply a general designation of a broad class when unreasonable discrimination exists or results. In the case of *Smith v. Cahoon, supra,* the attempt was made to include all auto transportation companies as a class—and at the same time exempt those transporting farm products. Here the statute attempts to include all for-sale cars as a class—and at the same time exempt those driven from local manufacturing or assembly plants. This Court frowned upon the attempt in the *Cahoon* case. We

contend that the attempt here is subject to the same defect of arbitrary discrimination. To exempt a far greater number of competitive cars, when the trial court held that "Altogether, it is difficult to distinguish between the two systems of transportation" [R. 40], must condemn the statute as one having as its primary purpose "the prohibition of competition." (*Buck v. Kuykendall, supra,* at 316.)

Second, while a general classification is not invalidated by resultant necessary injury to a few, or injustices in isolated or incidental cases, arbitrary discrimination which results in the penalizing of a very substantial number of innocent victims destroys the healing qualities of the rule. Appellants urge the contention that because the class regulated or charged in this instance may include "variations or departures" (*i. e.,* those who do not follow the practice of moving in fleets or caravans), for-sale cars driven singly may still be included, because "an integral part of the practice." (Brief p. 56.) They say that one who moves 80% of his vehicles in caravan cannot complain because a statute which defines the class "in terms of the practice which brought about caravan operations" includes and taxes the 20% he moves singly. The inference is that twenty out of a hundred is so minor a proportion as to be merely incidental. In support of this contention they cite *Purity Extract & Tonic Co. v. Lynch,* 226 U. S. 192, and *Euclid v. Ambler Realty Co.,* 272 U. S. 365. The rule is of course a familiar one that incidental discrepancies in the application of a statute and incidental injustices brought about by its operation need not necessarily invalidate an attempt at classification. But the citation of these decisions demonstrates the inapplicability of the rule here.

Reason and a sense of proper balance must govern in its application. There surely is a line of demarcation, the overstepping of which stamps an effort to ignore manifest injustices of a substantial character as so arbitrary that nothing short of invalid discrimination results. The question of *degree,* the *extent* to which innocent victims are made to suffer must be weighed. *Reasonableness* is indispensible. The curative effect of the rule cannot be invoked to heal unreasonable infringements of rights. This is clearly recognized in the decisions relied upon by appellants. The rule is thus carefully qualified in the *Euclid* case:

> "The inclusion of a *reasonable* margin to insure effective enforcement will not put upon a law, otherwise valid, the stamp of invalidity." *Euclid v. Ambler Realty Co., supra,* at 388. (Italics supplied.)

Here we are not dealing with any mere "reasonable margin" such as was excused in the *Euclid* case. We have a definite and substantial proportion—twenty per cent. or 3,000 sufferers out of 15,000, when we consider the number of cars driven in singly as compared with those in fleet formation. This transcends a mere incidental or necessarily concomitant inclusion. And when we consider the for-sale cars driven in singly as compared with other outside-registry cars driven in singly we find that 99.4 per cent is waived aside and exempted and six-tenths of one per cent is penalized. (See analysis of figures, *post,* p. 70.) Under such circumstances the attempted exactions of the statute cannot qualify under the "necessarily-resultant-injury" rule. Here the overbalanced and inordinate injury inflicted results in destroying the *reasonableness* which must characterize the application of

such a statute. The limits of all excusable indulgence in reasonableness are transgressed. The trespass can result only in discrimination.

In their argument in support of the "description of a class" followed by the statute, appellants emphasize the number of states which have adopted a similar method in attempting to classify for the purpose of regulating and taxing, *i. e.*, the designation of the for-sale car moved on its own wheels. In only two instances, however, have the statutes enumerated been subjected to adjudication. These are clearly distinguishable.

In the case of the New Mexico statute, adjudicated in *Morf v. Bingaman, supra,* there was the clear distinction that the Act "applied alike to all cars moved for sale, whether moving intrastate or interstate" (at 410). There was no attempted exemption of a favored or competitive class. It was not shown that any transportation from factories or assembly plants took place within that state. The question of such discrimination was not presented to the Court.

In the case involving the Idaho statute, the State Supreme Court very clearly recognized that, had any facts existed to support it, the charge of discrimination might have condemned the Act. *Wallace v. Pfost,* 57 Idaho 279, 65 Pac. (2d) 725, 110 A. L. R. 622. There the statute affected only those cars transported from without the state, which is virtually the situation here as regards for-sale cars—the interzone provision being almost purely theoretical, the creation of the two zones being, as the District Court held [R. 40], "highly suggestive of an effort to create a distinction where none in fact exists." In considering the question of discrimination in favor of

for-sale cars moved entirely within the state the Idaho Supreme Court based its decision upon the fact that there was "no showing that automobiles are manufactured in this state" and that while there was

> "evidence of *isolated cases* where new automobiles have been transported from within the state from resident dealers' places of business for the purpose of resale and *possible* transportation of used automobiles from within the state for the purpose of resale. . . .
>
> "A *quantum of business,* such as would defeat the classification as made by the Legislature, does not appear to have been shown." *Wallace v. Pfost, supra,* at p. 728, 65 Pac. (2d). (Italics supplied.)

In the case before us not only is there a showing of numerous manufacturing and assembly plants in California turning out automobiles and trucks in great quantities, but the movement of for-sale cars entirely within the state instead of being susceptible to characterization as "isolated cases" amounts to at least five times as many as are driven in from outside the state. Certainly this constitutes a "quantum of business" which must compel consideration when confronted with the charge of discrimination.

These are the only two decisions to which we have been referred passing upon the statutes of the various states enumerated by appellants as those adopting the classification of for-sale motor vehicles moved on their own wheels "for the purpose of regulating and taxing." (App. Br. pp. 46-47.) In the first, the question of dis-

crimination here presented was not even raised. In the second, the Court decided that the "quantum of business," *i. e.*, that shown by the evidence as a few "isolated cases," was not sufficient to support the charge. Again we repeat that we have found no instance where the rule of reasonableness has been so flagrantly transgressed as is asked by appellants in this case.

Appellants refer also to several states in which they assert that "administrative rulings" have been given which adopt the caravan movement designation. (Brief pp. 47-48.) The inference attempted to be drawn is not clear nor the argument persuasive to us. We have no objection to any convenient designation used or recognized in administrative rulings or elsewhere so long as discrimination and unjust treatment do not result. We have been referred to no adjudications upholding such rulings where discrimination was charged, and we have found none.

It may be that the moving of automobiles over the highways for purpose of sale has been identified in many instances with the practice of moving them in fleet or caravan formation. It may even be assumed, for the purpose of argument, that this gave rise to the practice or method. But when it is revealed that the attempt to apply such an all-inclusive, generic designation as that of "cars moved for sale on their own wheels" results in a classification so ill-chosen and inapplicable to those actually affected that it discriminates arbitrarily and unjustly, such a designation can no longer be sanctioned. Some other

method of describing the motor vehicles sought to be regulated and charged—or, more properly, their *movements*—must then be devised.

It might be regarded by some as reasonable and justifiable, in the attempt to reach and regulate all who go to church, to adopt a designation or classification using the term "hypocrites," resorting to the argument that the practice of going to church is primarily and essentially identified with and engaged in by hypocrites, or was even invented or originated by them,—truly religious persons worshipping unostentatiously in private. But the attempt would fail, as arbitrary discrimination, and those seeking to apply such a designation would be told that they must adopt a more accurate method of describing the class by whom the entire body of church-goers could with reason and fairness be identified. So here, because many who drive their cars for purpose of sale do so in fleet or caravan formation the substantial number who do not so transport their cars or contribute to any trouble sought to be regulated are not to be punished. An unjust discrimination is not to be condoned merely because it may be somewhat more difficult to correctly and adequately describe those sought to be affected.

Appellants' argument as to the difficulties of designating the movement of cars sought to be regulated—if that be the objective—is not persuasive. (App. Br. p. 55.) The suggestion of "insurmountable difficulties of law drafting, and of action and interpretation facing enforcement officials" is not impressive. Our regulatory statutes are

filled with definite and constantly enforced restrictions governing the weight, width and length of motor vehicles, as well as their speed, distance apart and movements with relation to other traffic. It is the most common and effective method known or employed. It defines and regulates *the movement* itself, the thing supposedly aimed at here. It does not discriminate against or penalize a substantial number just because they happen to fall within a broad designation, as for example the twenty per cent who come in singly. In short, it is a valid exercise of the right to regulate the "manner of use," as distinguished from an attempt to dictate as to the "persons by whom the highways can be used" (without the exaction of a fee). The former is entirely proper, if reasonable and free from discrimination; the latter violates the constitutional safeguards. (*Buck v. Kuykendall, supra.*) Its primary purpose becomes "the prohibition of competition."

But even though it were entirely impossible to draft a provision which would describe the movement complained of (and this would be the last admission to be made by our law-drafters) still this could not excuse or condone a statute invalid because of its unreasonableness and discrimination. Appellants would have this Court weigh the relative merits of legislative methods. This we understand it will not do. We do not ask that this Court substitute its judgment for that of the legislature. All we ask is that it withhold judicial sanction from a statute which has violated the constitutional guaranties as to interstate commerce and equal protection of the laws.

II.

The Exaction of the Fees in the Amounts and in the Manner Attempted Invalidates the Statute.

(1) The Fee Exacted for Traffic Regulation and Enforcement of the Act Is Excessive and Unlawfully Burdens Interstate Commerce and Violates Equal Protection and Due Process.

The District Court held in its opinion that no problems of traffic regulation were presented justifying the expenditure of a tax equaling $112,500 (the computed total of the $7.50 charge for traffic regulation based upon the stipulated number of cars [R. 81], "nor can a charge of $7.50 for the use of the highway be justified with respect to each car transported for sale when it comes from without the state." [R. 42.] It directed attention to the decision of this Court in *Great Northern Railway v. Washington,* 300 U. S. 154, in which it was held that, while a law exhibiting the intent to impose a compensatory fee for regulation and inspection is *prima facie* reasonable,

> "If the exaction be so unreasonable and disproportionate to the service as to impugn the good faith of the law, it cannot stand either under the commerce clause or the Fourteenth Amendment" (at 160).

In the attempt to overcome the defects held to invalidate the 1935 California Caravan Law in *Ingels v. Morf, supra,* the statute was revised to split the $15.00 fee in two and apply half to traffic regulation and half to use of the highways.

Appellants contend that the burden was upon the appellees to establish that these fees or charges are exces-

sive for the purposes declared. It is conceded that, as a general statement, reasonable amounts may be charged and demanded for reimbursement for the expense of providing facilities or of enforcing regulations,—the validity of their demand being conditioned upon reasonableness and freedom from discrimination. (*Interstate Transit v. Lindsey, supra,* at 186; *Interstate Busses Corp v. Blodgett,* 276 U. S. 245, at 250-252.)

The contention of appellants as to the burden of proof, we submit, is subject to qualification. There appears to be some variance between the rule as to burden of proof applied in *Great Northern Railway v. Washington, supra,* and the subsequent case of *Bourjois Inc. v. Chapman,* 301 U. S. 183. *Ingels v. Morf, supra,* decided at a date in between the decisions of the two above cases, is the authority relied upon by appellants for its contention. It adjudicated the 1935 Caravan Law which by its definition of caravaning expressly limited its application to transportation of for-sale cars *"from without the state."* (*Ingels v. Morf, supra,* at 292.) The 1937 statute changed the definition so that the phrase "from without the state" is deleted. (Sec. 1.) [R. 12.] The statute now by its terms operates directly *both* upon interstate and intrastate commerce, section 1 providing that it applies to movements of all cars within the state (except interzone movement excepted in section 8) transported for purposes of sale to or by any dealer "within or without the state." [Appendix A, p. 75.] The statute cannot be said to operate "only indirectly" upon interstate commerce, because the evidence shows that approximately 15,000 automobiles were caravaned into the state [Stipulation, R. 81], whereas the fleet interzone move-

ments within the state were admitted to be only "occasional." [R. 113.] By its terms it operates directly upon both. Now, in *Bourjois Inc. v. Chapman,* 301 U. S. 183, decided by this Court after *Ingels v. Morf, supra,* the following rule is expressed:

> "Here, the statute operates directly only upon intrastate commerce. Where interstate commerce is only indirectly affected, it rests upon one challenging the legislation to show actual undue burden upon such commerce. See Pacific Telephone & Telegraph Co. v. Tax Commission, 297 U. S. 403" (at 187-188).

In the *Bourjois Inc.* case states the rule now held to be controlling there is a plain deduction to be drawn that where a statute operates *directly* on *both* interstate and intrastate commerce the burden does not rest upon the one challenging it to show the fees exacted are exhorbitant but upon the defendants, as announced in the *Great Northern Railway* case, *supra,* at 162, which followed the decision in *D. E. Foote & Co. v. Stanley,* 232 U. S. 494, 58 Law Ed. 698, 34 Sup. Ct. 377. We submit such to be the logical conclusion.

But whatever rule may be applied, the fact remains that the defendants in this case (appellants here) undertook to present evidence in support of their claim that the exactions as regards the $7.50 charged for traffic regulation are not excessive. This they did by putting the witnesses Personius, Ench and Greer on the stand [R. 81-105], who testified on this subject as well as along other lines, and by filing the affidavit of Chief Cato [R. 157]. The evi-

dence so presented is somewhat sporadic and is characterized by a lack of definiteness in most instances. The District Court in its opinion stated that "Mr. Cato, chief of the patrol, does not say that a single officer or employee devotes his entire time to the caravaning problem. At the most only Captain Personius and possibly two district officers do so" [R. 39]. A statement from the accounting department was offered for identification [R. 82] and questions were asked Captain Personius concerning various items. He stated that he had nothing to do with the keeping of the books. He also said "I do not know whether those accounts are correctly kept or not" [R. 82]. He testified as to numerous items in the statement and answered some questions by the Court.

In their brief, appellants attempt to coordinate and apply the testimony of Captain Personius [R. 81 *et seq.*] and the affidavit of Chief Cato [R. 157 *et seq.*]. (App. Br. p. 59 *et seq.*) They estimate a total amount of expense as a result of their computation of items discussed in scattered fashion in various portions of the said testimony and affidavit. They give this total as $133,041.00 for annual expense of traffic regulation—a total assumptively attributable to *caravan* traffic. (Brief p. 64.) There is no such sum stated *anywhere* in the evidence. The statement from which the witness Personius testified was not introduced into evidence and is not a part of the record. It is not shown whether this prepared statement set forth any total of expense or not. Personius did not testify as to any total. Neither is there any total sum set forth in Chief Cato's affidavit. In fact the inference seems to be a fair one that because of the indefinite and uncertain factors present in the entire situation all attempts to show any defi-

nite amounts by which they would be willing to stand were avoided by defendants. Chief Cato very frankly stated:

> "It is an almost impossible task to say what portion of the increase in highway patrolmen which was made necessary, was due to caravaning." [R. 163.]

And further on in his affidavit, in discussing the assignments of the men of his department he very bluntly said:

> "Again, it cannot be said what portion of their time is devoted to caravan traffic." [R. 164.]

The trial court was plainly not satisfied that any such substantial amount of expense as that attempted by appellants to be identified with this work was attributable to it. It considered all the evidence before it and weighed the credibility and effect of all matters presented. It was the trial court and that was its province. It could and it was its duty to take into account any vagueness and lack of definite application, and also any inconsistencies and discrepancies having an effect upon the weight or credibility. That it did so is apparent. As an illustration of this, in its opinion the District Court said

> "The officer charged with the enforcement of the act testified that after the enactment of the law *three officers* were assigned to Highway 50 between Carson City, Nevada, and Placerville, California, south of Lake Tahoe. At the same time defendants present the records of the Public Service Commission of the State of Nevada, from which it appears that during the entire eight months, beginning with January 1, 1937, and ending with August 31 of the same year, the period of greatest activity, a total of *only 9 cars* were brought into California for sale over Highway 50." [R. 39-40.] (Italics supplied.)

(The evidence referred to is found in the testimony of Personius [R. 96] and the affidavit of Scott [R. 142, 147], both being parts of appellants' evidence.)

The trial court clearly was neither impressed nor convinced, after careful consideration of the entire presentation. That it acted within its proper sphere in finding as to the facts from the evidence before it need scarcely be stated. That where there is any evidence to sustain a finding of fact by the trial court it will not be disturbed on appeal is likewise elementary. (*Dooley v. Pease,* 180 U. S. 126, 131.) And further, it goes without saying that having proceeded and introduced evidence—whether required to do so or not—appellants are thereafter bound by it.

The District Court's conclusion that the fee demanded and exacted as reimbursement for the expense of enforcing regulations of the interstate commerce was excessive and unreasonably exceeded the outlay required condemns the statute as violative of the commerce clause.

Ingels v. Morf, supra;
Interstate Transit v. Lindsey, supra.

Before leaving the matter of the excessive charge for caravan traffic regulation, two positions taken by appellants in their brief should be clarified and corrected. *First,* throughout their brief they repeatedly state the number of cars charged the fee coming into California annually to be 14,000. By definite stipulation [R. 81] it was agreed that "from January 1, 1935, to November 29, 1935 (approximately an eleven months period) there were 14,000 automobiles caravaned into California for the purpose of sale. . . . The number of cars caravaned into California

since that time per year is approximately in the same proportion." To be exact, this makes the total 15,264, resulting in a total fee of $117,480 from the $7.50 charge, rather than the $105,000 stated by appellants. (App. Br. p. 65.) *Second,* appellants' attempt to explain away the embarrassing effect of the fact that three officers were assigned for caravan traffic duty on the circuitous and mountainous route lying to the south of Lake Tahoe (Highway 50), far less traveled than the main artery, while only nine cars were shown by official records to have been brought into California for sale over the said Highway 50 over a nine months' period during the busiest part of the year. (App. Br. pp. 67, 69.) Appellants' attempted explanation is purely speculative and conjectural and certainly cannot justify their criticism of the Court as having "completely misinterpreted and misunderstood the record." Were we to indulge in less speculative discussion we would direct attention to the fact that the affidavit shows that eight of those nine cars were consigned to Frank E. Buckett & Co. at Fresno, California [R. 147—9th item enumerated in the tabulation] and surmise that the reason these may be known to have traveled the Carson City-Placerville road (Highway 50) is because the drivers thought they could thus more directly and quickly reach Fresno that way than via Truckee, further north; Fresno, as shown on the map contained in appellants' brief (p. 32), being located to the south and west of Carson City, in approximately the center of California. Such an explanation would furnish a complete answer to appellants' doubt,—were any answer or explanation required.

We think that, contrary to appellants' attempted disparagement, the trial court understood the evidence all right, and gave everything before it careful consideration.

We wish it to be clearly understood that there is no inclination on the part of appellees to criticize or reflect in any way upon the appellant public officials who seek to defend the statute and justify its attempted treatment of for-sale car transportation. Their attitude is but a natural one. The effort on the part of a public officer to justify and defend the work of his own department is readily understandable, as is his desire to enlarge and increase the importance of the department under his control and management, and we make no criticism of any official attitude.

(2) The Fee Exacted for Use of the Highways Is Invalidated by Arbitrary Discrimination in Favor of Other Cars of Outside Registry.

With reference to the fee for use of the highways, appellants have sought in their brief (App. Br. p. 67) to dismiss all consideration of the discrimination between the cars brought in by those affected by the statute and all other cars of outside registry coming into the state. We do not, in this connection, address ourselves to the relation of the amount of the fee charged to the value of the privilege, or to relationship to costs of highway construction or maintenance, there being no direct evidence upon these questions. We do emphasize, however, that the charging of for-sale cars driven singly and the exemption of other outside-registry cars constitutes such arbitrary discrimination as to clearly invalidate the charge exacted for the privilege of using the highways.

As stated by appellants, over 500,000 non-resident vehicles annually enter California which are not required to pay the fee prescribed by the Caravan Act, to be exact 505,943 in 1937 [R. 39, 166-167]. As stated in the District Court's opinion "From this it appears that the 15,000 cars brought in for sale on their own wheels are not to exceed 1½% of the total number of cars coming over the border in 1937" [R. 39]. And as related to the 3,000 of such cars driven in singly, the percentage is only .6 of one per cent of those of outside registry. (3,000 is a little less than .6% of 505,943.) This .6% is charged the fee and the others are exempted. As pointed out in *Interstate Transit v. Lindsey, supra,* a charge may be imposed as compensation for the privilege of using the public highways, which is a fair contribution to the cost of constructing and maintaining them and of regulating the traffic thereon and "where it is found that the tax is so imposed, it will be sustained unless the taxpayer shows that it bears no reasonable relation to the privilege of using the highways *or is discriminatory*" [at p. 186]. (Italics supplied.) This is followed by the statement, "But the mere fact that the tax falls upon one who uses the highway is not enough to give it presumptive validity."

We submit that the subjection of these cars to this tax results in nothing less than discrimination, and that whether the charge made bears a relation to the cost of constructing or maintaining the highway or not the very patent discrimination invalidates the charge.

The argument of appellants to the effect that the Legislature must have opined that the state is compensated in some other manner for the use of its highways by these other half million cars coming in annually (App. Br. p. 67) is not persuasive. If by this it is meant to infer that it was deemed more advantageous or more profitable or more compensatory to California and its highways, for example, to admit without charge tens of thousands of needy or destitute persons coming in their outside-registry cars in search of employment than the owner of a car whose sole distinguishing identification is that he is to offer it for sale in the conduct of his business, the illogical and unsupportable effect of the assumption becomes apparent.

We submit that any classification or distinction must be reasonable and must bear a proper relation to the purpose sought to be served. Here the purpose is compensation for the privilege of using the highway. Tested by reasonableness—and there must be some saturation point to that essential element—how can it be said that a compensatory fee can be exacted from six-tenths of one per cent, but that the compensation of the other 99.4% need only be deemed or expected to be forthcoming in some other vague and undefined manner? There is a limit to reasonableness, and transgression of that limit destroys it. Purely arbitrary action then results. No judicial usurpation or invasion of legislative judgment is required or results here when such is found to exist. The attempt reaches such arbitrary proportions and degrees as to condemn it as just what the District Court held it to be—"nothing but discriminatory" [R. 41].

III.

The plea is made by appellants (App. Br. p. 70) that the Court, even though one or even more parts of the statute are invalid, sustain the rest of the act and hold it operative. They point to the usual saving clause (Section 14) found in such statutes. [Appendix A, p. 80.]

Appellants state that by including this provision "the Legislature has thus requested the courts not to annul the act completely." (Brief p. 71.)

The principle of severability is well known and is naturally not challenged, but its application is limited to those cases where the arbitrary action does not characterize and apply to the effect of the entire statute. In *Weller v. People,* 268 U. S. 319, cited by appellants, it was merely held that if one section of a statute which restricted resale prices were eliminated "a workable plan would still remain" (at 325). This is typical of the application of the rule. Here the challange to the validity of the Caravan Law is directed to a fundamental defect, a basic classification so palpably arbitrary as to render the entire statute discriminatory and invalid. Hence, the plea to sever its provisions is unavailing and ineffective as against the basic defect of unconstitutionality.

The statement is made by appellants that by the insertion of the saving clause as to severability the Legislature has requested the courts not to annul the statute completely but if any parts are shown to be invalid only such portions be stricken down, so that its efforts to insure safety through this act may not be totally destroyed, and emphasis is placed upon the recognition by this Court of "the efforts of governmental authorities everywhere to mitigate the destruction of life, limb and property resulting from

the use of motor vehicles" expressed in the recent case of *H. P. Welch Co. v. State of New Hampshire,* ..... U. S. ....., 83 L. Ed. Advance Opinions 363, at 366. Certainly few more important objectives challenge our law makers than such mitigation, and if safety be the object the efforts cannot be too highly lauded. The witness Asher testified, however, that in all his experience of caravaning over 4,000 cars since 1930 he had had but two small claims, each for less than $50.00 [R. 105, 106], and it was stipulated that all the other plaintiffs would testify in substance and effect the same as Mr. Asher [R. 107].

The right which appellees seek to have the Court protect is a substantial thing and is of great importance to them. They ask that their interstate commerce be not unconstitutionally burdened and that they be not discriminated against and denied equal protection of the laws. In other words, they seek the protection of the courts against the penalizing of their business in favor of that of others. Paul Gray, president of the plaintiff Paul Gray, Incorporated, testified that the net profit they make on each transaction involving the transporting of cars into California for sale is "approximately $10.00 per car" [R. 108]. It was stipulated that the rest of the plaintiffs would testify in substance and effect the same [R. 109], and there was no contradictory evidence.

The exaction of the fee imposed by the statute upon their business practically destroys it, while that of others remains unaffected. They seek the protection afforded them by the safeguards of the Constitution.

> "The protection against imposition of burdens upon interstate commerce is practical and substantial and

extends to whatever is necessary to the complete enjoyment of the right protected."

Southern Pacific Co. v. Gallagher, ... U. S. .....; 83 L. Ed. Adv. Op. 352, 358.

Equal protection of the laws is denied where reasonableness in a classification is transgressed.

"While reasonable classification is permitted without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed."

Southern Railway Co. v. Greene, 216 U. S. 400, 417.

Conclusion.

For the reasons presented herein, which are summarized in the summary of argument on pages 10-11 of this brief, it is respectfully submitted that the action of the District Court in declaring unconstitutional the 1937 California Caravan Law should be sustained and its decree granting a permanent injunction affirmed.

Respectfully submitted,

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Attorney for Appellees.

Los Angeles, California.

APPENDIX A.

THE 1937 CALIFORNIA CARAVAN LAW.

An act to regulate the caravaning of vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of vehicles in caravan for the privilege of using the public highways and for the cost of regulating persons engaged in caravaning and providing such fees shall be a lien and for the enforcement of such liens and the collection and disposition of such fees and imposing penalties for violation thereof, and to repeal an act entitled "An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of motor vehicles in caravan and imposing penalties for violation thereof," approved July 6, 1935, declaring the urgency thereof, and providing that it shall take effect immediately.

(Chapter 788, Statutes of 1937. In effect July 2, 1937.)

SECTION 1. The term "caravaning" as used in this act shall mean the transportation of any vehicle of a type subject to registration under the Vehicle Code, operated on its own wheels, or in tow of a motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, purchaser or prospective purchaser, whether such agent, dealer, purchaser or prospective purchaser may be located within or without this State.

SEC. 2. The term "dealer" when used in this act shall mean and include every individual, partnership, corporation or trust whose business in whole or in part is that of caravaning new or used vehicles as herein defined, or of selling or exchanging new or used vehicles, and shall in-

clude every agent or representative of every such person engaged in such business, except that nothing herein contained shall be construed to require the performance of any act or the payment of any fee by any agent or representatives which has previously been performed or paid by his principal.

SEC. 3. No person, firm or corporation, shall use any highway in this State for caravaning vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California upon application at its office in Sacramento or any of its regularly established branch offices other than stations at the State boundary line a special permit as to each vehicle so caravaned, for use of the highways of this State in caravaning such vehicles, which permit shall be displayed by posting the same upon the windshield of such vehicle or in other prominent place thereon where it may be readily legible.

SEC. 4. As a condition precedent to the use of the highways of this State for the purpose of caravaning and the issuance of any special permit provided for in the previous section of this act, the Motor Vehicle Department of the State of California shall charge and collect, for each vehicle for which a caravan permit may be issued whether such vehicle be operated under its own power or in tow of a motor vehicle, a fee of seven and fifty one-hundredths dollars as compensation for the privilege of using the public highways of this State and a fee of seven and fifty one-hundredths dollars to reimburse the State for expense incurred in administering police regulations pertaining to the operation of vehicles moved pursuant to such permits and to public safety upon the highways as affected by such operation.

SEC. 5. Permits issued pursuant to the provisions of this act shall be valid for a period of six months after date of issuance and shall be valid only in the hands of the original permittee but shall not authorize the operation of any vehicle other than that for which originally issued. Such permits shall contain such information and be in such form and shall be issued under such rules and regulations as may be prescribed by said Motor Vehicle Department.

SEC. 6. The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this State by such vehicle during the period that such vehicle may be operated for the purpose of sale or exchange under and solely in accordance with such permit upon the public highways of this State; provided, however, that nothing in this section shall exempt the owner or operator of such vehicle from compliance, except with respect to fees or license charges, with all laws of this State now or hereafter adopted, relating to safety in the use of the public highways.

SEC. 7. All fees from the issuance of permits provided for under this act shall be collected by the Motor Vehicle Department. One-half of such fees shall be paid into and become a part of the motor vehicle fund in the State treasury, and are hereby appropriated out of said fund for the support of the Department of Motor Vehicles; provided however, that should a motor vehicle support fund be created in the State treasury said one-half of such fees shall be paid into and become a part of said motor vehicle support fund. The remainder of such fees shall be paid into and become a part of the State highway fund in the

State treasury. The moneys so derived by the State are intended as compensation for the privilege of using the highways of this State and to reimburse the State Treasury for the added expense which the State may incur in the collection of such fees and in the administration and enforcement of this act and the expense of policing the highways over which such caravaning may be conducted.

SEC. 8. The provisions of this act shall not apply to the transportation of motor vehicles between points within Zone 1 or between points within Zone 2, which zones are hereby defined as follows:

ZONE 1—That part of the State of California lying within the counties of San Diego, Imperial, Orange, Riverside, San Bernardino, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Kern and Inyo;

ZONE 2—That part of the State of California not included within Zone 1 as herein defined.

SEC. 9. Every dealer in vehicles shall report to and list with the Motor Vehicle Department on forms to be prescribed by such department and in accordance with rules in regard thereto promulgated by such department, each vehicle received, held or offered by him for sale which has been caravaned over the public highways of this State. Such report and listing shall be made forthwith upon the receipt of such vehicle. Such report, among other things, shall show the number of the caravan permit authorizing the operation of the vehicle covered in such report. In the event no permit has been secured for such operation payment of the required fees and penalty shall be made to the department and shall accompany such report. In the event permit fees required by this act are not paid when due a

penalty of fifty per cent of such fees for each such vehicle shall be assessed and collected by the department.

SEC 10. On demand of the Motor Vehicle Department, any dealer in vehicles shall furnish to the department evidence as to the origin of any vehicle not previously registered in this State which is held or offered by him for sale, and evidence of the manner in which such vehicle was transported to the place in which it is or has been held or offered for sale. It shall be prima facie evidence that a vehicle not previously registered in this State is or has been transported for purpose of sale if it is exchanged, sold or offered for sale within thirty days after it has been operated over the public highways of this State.

SEC 11. The permit fees provided for herein shall be due and payable in advance of the operation upon the public highways of any vehicle for which such permit is required and shall be a lien against the vehicle for which they are due during the time such vehicle is held for sale or offered for sale or resale.

SEC 12. The department shall collect the permit fees and enforce the liens provided for herein by seizure of the vehicle or vehicles upon which such fees are a lien from the person or persons in possession thereof, if any, and by sale of such vehicle. The seizure and sale herein authorized may be made at any time after such fees become due and shall be conducted and carried out by the department in the same manner as is provided by law for the seizure and sale of personal property by the assessor for the collection of taxes due on personal property.

SEC. 13. Violation of any of the provisions of this act is a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

SEC. 14. If any section, paragraph, clause or phrase of this act should be held to be unconstitutional by any court of competent jurisdiction such holding shall not affect any other part of this act and it is hereby declared to be the intention of the Legislature that no section, paragraph, sentence, clause or phrase of this act has been an inducement to the enactment of any other part hereof.

SEC. 15. An act entitled "An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of motor vehicles in caravan and imposing penalties for the violation thereof," approved July 6, 1935, is hereby repealed.

SEC. 16. This act is hereby declared to be an urgency measure within the meaning of Section 1 of Article IV of the Constitution, necessary for the immediate preservation of the public peace, health and safety and as such shall take effect immediately.

The following is a statement of facts constituting such necessity:

Experience has shown that, due to climatic conditions, the caravaning of vehicles occurs almost exclusively during the spring and summer months. It is necessary, therefore, in order to regulate caravan vehicles, the number of which is now increasing, that this act shall take effect immediately.

APPENDIX B.

THE 1935 CALIFORNIA CARAVAN LAW.

An act to regulate the caravaning of motor vehicles upon the public highways of this State, defining the term "caravaning" and providing for the licensing of motor vehicles in caravan and imposing penalties for violation thereof.

(Chapter 402, Statutes of 1935.)

SECTION 1. The term "caravaning" as used in this act shall mean the transportation from without the State of any motor vehicle operated on its own wheels, or in tow of another motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, manufacturers' representative, purchaser or prospective purchaser, whether such agent, dealer, manufacturers' representative, purchaser or prospective purchaser may be located within or without this State. The caravaning of motor vehicles as herein defined shall be considered as the transportation of property for hire by motor vehicle and shall be subject to all the laws of this State relative to the transportation of property for hire by motor vehicle upon the public highways of this State.

SECTION 2. No person, firm or corporation shall use any highway in this State, for caravaning motor vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California a special permit as to each vehicle so caravaned, for use of the highways of this State in caravaning such vehicle, which permit shall be displayed by posting the same upon the windshield of such vehicle or in other prominent place thereon where it may be readily legible. It shall be unlawful to operate three or more vehicles or groups

of vehicles in caravans unless a space of at least one hundred fifty feet shall at all times be maintained between each vehicle or group of vehicles being so caravaned.

SEC. 3. As a condition precedent to the issuance of any special permit provided for in the previous section of this act the Motor Vehicle Department of the State of California shall charge and collect a fee of fifteen dollars for each motor vehicle for which a caravan permit may be issued, whether such vehicle be operated under its own power or in tow of another motor vehicle; provided, however, that no such permit shall be issued by said Motor Vehicle Department unless and until the applicant therefor shall have produced evidence to the satisfaction of said Motor Vehicle Department that all of the laws of this State relating to the transportation of property upon the public highways therefor for hire shall have been complied with.

SEC. 4. No permit issued under this act for caravaning motor vehicles or vehicles shall be transferable either as between persons or as to the vehicle for which it is issued, and shall only be valid for the trip or trips to be specified in said permit, and in no event shall such permit be valid for a period of more than ninety days after it shall have been issued. Such permit shall contain such information and be in such form and shall be issued under such rules and regulations as may be prescribed by said Motor Vehicle Department. Such permit shall be conditioned upon the permittee complying with all laws of the State of California and the United States.

SEC. 5. The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this State by motor vehicle during the period that such

motor vehicle may be operated under and in accordance with such permit upon the public highways in this State; provided, however, that nothing in this section shall exempt the owner or operator of such vehicle from compliance, except with respect to fees or license charges, with all laws of this State now or hereafter adopted, relating to the transportation of property for hire.

SEC. 6. All fees from the issuance of permits collected by the Motor Vehicle Department under this act shall be paid into the general fund in the State treasury. Said department shall file with the Controller on or before February first and August first of each year a detailed account of the receipts of said Department from this source for the six months next preceding. The moneys so derived by the State are intended to reimburse the State treasury for the added expense which the State may incur in the administration and enforcement of this act and the added expense of policing the highways over which such caravaning may be conducted, so as to provide for the safety of traffic on such highways where caravaning is being conducted.

SEC. 7. Violation of the provisions of section 2 or of section 4 of this act is a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

SUPREME COURT OF THE UNITED STATES.

No. 534.—October Term, 1938.

Frank W. Clark, as Director of the Department of Motor Vehicles of the State of California, et al., Appellants,
vs.
Paul Gray, Inc., Al Asher, and Hirsch Mercantile Company, et al.

Appeal from the District Court of the United States for the Southern District of California.

[April 17, 1939.]

Mr. Justice Stone delivered the opinion of the Court.

The principal questions for decision are whether the California Caravan Act of 1937, exacting fees aggregating $15 for each automobile driven into the state for sale, imposes a forbidden burden on interstate commerce or infringes the due process or equal protection clauses of the Fourteenth Amendment.

This is an appeal under §§ 238(3), 266 of the Judicial Code, 28 U. S. C. §§ 345(3), 380, from a final decree of the district court for southern California, three judges sitting, enjoining appellants, officers of the State of California, from enforcing the license and fee provisions of Chapter 788, p. 2253, California Statutes of 1937. *Gray* v. *Ingels*, 23 F. Supp. 946.[1]

The statute, known as the Caravan Act, was enacted as a substitute for the Caravan Act of 1935, c. 402, Cal. Stat. 1935, held invalid in *Ingels* v. *Morf*, 300 U. S. 290, as an infringement of the commerce clause. "Caravaning" is defined in § 1 of the present Act as the "transportation of any vehicle . . . operated on its own wheels, or in tow of a motor vehicle, for the purpose of selling or offering the same for sale . . . within or without this

[1] The suit was begun July 14, 1937, before the enactment of the amendment to §24 of the Judicial Code, 50 Stat. 738, providing that "no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State." Section 2 of the Act excludes from its operation suits begun in the district courts before its enactment.

State." Sections 4, 5 and 6 exact in lieu of all other fees two license fees, each of $7.50, for a six months permit for caravaning a vehicle on the state highways. One of these is "to reimburse the State for expense incurred in administering police regulations pertaining to the operation of vehicles moved pursuant to such permits and to public safety upon the highways as affected by such operation"; the other is declared to be "compensation for the privilege of using the public highways". Section 8 excepts from the operation of the statute vehicles moving wholly within either of two zones which are approximately the northern and southern halves of the state. Other sections of the Act make provision for the issuance of licenses and the collection of fees. Section 12 provides for the collection of fees by seizure and sale of vehicles transported in violation of the Act, and § 13 prescribes criminal penalties for violation.

Appellees, numerous individuals, copartnerships and corporations, joined in bringing the present suit against appellants, state officers charged with the duty of enforcing the Act, alleging that each appellee had driven and would in the course of business drive automobiles into California for the purpose of sale. They prayed an injunction restraining appellants from collecting the fees and enforcing the provisions of the statute in aid of their collection. The district court's findings state that the amount involved in the action is in excess of the sum of $3,000; that each of appellees, in the course of business of selling motor cars, purchases cars previously registered in other states and "caravans" them into the state of California; that cars for sale are often moved between points in a state zone; that the operation of cars in caravans does not create an additional hazard or a traffic problem necessitating special policing of the caravans and that the caravaning of cars does not create undue wear and tear on the highways of the state; that the fees charged are excessive and bear no relation to the added expense to the motor vehicle department of policing the highways of the state of California; and that they are disproportionate to other taxes or license fees charged by the state for the use of the highways. The court concluded that the statute discriminated against interstate commerce, deprived appellees of their property without due process, and denied to them equal protection of the laws, in that it applies only to those using the highways for the transportation of motor vehicles for the purposes of sale and does

ot apply to other persons using the highways under comparable rcumstances.

Appellants assail here the findings of fact of the court below on hich it predicated its conclusion of unconstitutionality, and insist at upon the evidence there is no basis for the conclusion that the es exacted are excessive or that there is discrimination against terstate commerce or a denial of equal protection or due process.

URISDICTION OF THE DISTRICT COURT.

A motion of appellants in the court below to dismiss the bill of omplaint for want of the jurisdictional amount was withdrawn, nd the jurisdiction of the district court is not challenged here. ut on the argument, it appearing doubtful whether the "matter in ontroversy" exceeded "the sum or value of" $3,000, § 24(1) of the udicial Code, 28 U. S. C. § 41(1), we raised the question whether he jurisdictional amount was involved, as was our duty. *Mansfield, Coldwater & Lake Michigan Ry. Co.* v. *Swan*, 111 U. S. 379, 82; *Stratton* v. *St. Louis Southwestern Ry. Co.*, 282 U. S. 10, 13; *t. Paul Indemnity Co.* v. *Red Cab Co.*, 303 U. S. 283, 287, note 10. The bill of complaint alleges generally that "the amount involved in his litigation is in excess of Three Thousand Dollars ($3,000.00), xclusive of interest and costs". But it is plain that this allegation s insufficient to satisfy jurisdictional requirements where there are umerous plaintiffs having no joint or common interest or title in he subject matter of the suit. As the bill of complaint shows on ts face, and as the findings establish, each appellee maintains his wn separate and independent business, which is said to be affected y the challenged fees. No joint or common interest of appellees n the subject matter of the suit is shown. Cf. *Gibbs* v. *Buck*, No. 76, decided this day.

It is a familiar rule that when several plaintiffs assert separate nd distinct demands in a single suit, the amount involved in each eparate controversy must be of the requisite amount to be within he jurisdiction of the district court, and that those amounts cannot e added together to satisfy jurisdictional requirements. *Wheless* . *St. Louis*, 180 U. S. 379; *Rogers* v. *Hennepin County*, 239 U. S. 21; *Pinel* v. *Pinel*, 240 U. S. 594; *Scott* v. *Frazier*, 253 U. S. 243. The general allegation in the bill of complaint that "the amount nvolved in this litigation is in excess of" $3,000 and the finding f the court that "the amount involved in the within action" ex-

ceeds the jurisdictional amount, give no indication that the amount in controversy with respect to the claim of any single plaintiff exceeds the jurisdictional amount and are insufficient to show that the district court had jurisdiction of the cause. *Pinel* v. *Pinel, supra.*

Examination of the record shows that only in the case of a single appellee, Paul Gray, Inc., is there any allegation or proof tending to show the amount in controversy. As to it the bill of complaint alleges that "it causes to be caravaned into the said state . . . approximately one hundred fifty (150) automobiles each year". This allegation is supported by evidence that this appellee is regularly engaged in the business and tending to show that its volume exceeded that amount when the act went into effect July 2, 1937. Since the amount in controversy in a suit to restrain illegal imposition of fees or taxes is the amount of the fees or taxes which would normally be collected during the period of the litigation, *Healy* v. *Ratta*, 292 U. S. 263, we cannot say, upon this state of the record, that jurisdiction was not established as to appellee Paul Gray, Inc.

We ignore affidavits filed here for the purpose of supplementing the record by showing the amount in controversy as to another appellee. While it has been the practice of this Court to receive affidavits for the purpose of establishing its own appellate jurisdiction under statutes prescribing that a specified amount in controversy is prerequisite to the appeal, *Williamson* v. *Kincaid*, 4 Dall. 19; *Rush* v. *Parker*, 5 Cranch 287; *Roura* v. *Philippine Islands*, 218 U. S. 386; see *Red River Cattle Co.* v. *Needham*, 137 U. S. 632, that procedure is inapplicable here. Our review of the action of the district court in assuming jurisdiction is confined to the record before the district court. *Henneford* v. *Northern Pacific Railway*, 303 U. S. 17.

Proper practice requires that where each of several plaintiffs is bound to establish the jurisdictional amount with respect to his own claim, the suit should be dismissed as to those who fail to show that the requisite amount is involved.[2] Otherwise an appellate court

[2] A different question is involved in the case of a creditor's bill to liquidate an insolvent corporation for the benefit of all creditors. There his claim must exceed the jurisdictional amount. Lion Bonding Co. *v.* Karatz, 262 U. S. 77. But creditors whose claims are less may be made parties because of their interest in a fund brought within the jurisdiction of the court. Gibson *v.* Shufeldt, 122 U. S. 27; Handley *v.* Stutz, 137 U. S. 366; National Bank of Commerce *v.* Allen, 90 Fed. 545, 555-556.

could be called on to sustain a decree in favor of a plaintiff who had not shown that the claim involved the jurisdictional amount, even though the suit were dismissed on the merits as to the other plaintiffs who had established the jurisdictional amount for themselves. Although it appears that such a result could not follow here, we think it better practice to dismiss the suit for want of the jurisdictional amount as to all appellees except Paul Gray, Inc. See *Rich* v. *Lambert*, 12 How. 347; *Ex parte Baltimore & Ohio Railroad*, 106 U. S. 5; *Hassall* v. *Wilcox*, 115 U. S. 398. Cf. *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233.

DISCRIMINATION.

Apart from appellees' insistence that the fees are an unconstitutional burden on interstate commerce because excessive, the substance of their contention is that the statute discriminates between automobiles transported into the state singly and those similarly transported intrazone, for which no fee is charged, and also that the statute discriminates between those cars driven by appellees in caravans and those similarly driven wholly within either of the state zones, for which no fee is charged.

In *Morf* v. *Bingaman*, 298 U. S. 407, we had occasion to consider the validity of a fee or tax exacted by New Mexico for the transportation into the state of any motor vehicle for the purpose of sale within or without the state. It there appeared that the plaintiff, with others, was engaged in transporting motor cars on their own wheels in caravans across the State of New Mexico for the purpose of sale, and that their transportation for that purpose had resulted in the creation of a distinct class of motor vehicle traffic of considerable magnitude. In the course of this business second-hand cars purchased at points in the east are assembled in caravans, which are driven as such to the point of sale in California. Large numbers of the cars are coupled in twos, each two in charge of a single driver who operates the forward car and controls the movement of both by the use of the mechanism and brakes of one. The drivers of caravans, except two or three regularly engaged, are casually employed and serve without pay or for small compensation in order to secure transportation to the point of destination. We said, page 411-412:

"The Legislature may readily have concluded, as did the trial court, that the drivers have little interest in the business or the vehicles they drive and less regard than drivers of state licensed

cars for the safety and convenience of others using the highways. The evidence supports the inference that cars thus coupled and controlled frequently skid, especially on curves, causing more than the usual wear and tear on the road; that this and other increased difficulties in the operation of the coupled cars, and the length of the caravans, increase the inconvenience and hazard to passing traffic. . . . There is ample support for a legislative determination that the peculiar character of this traffic involves a special type of use of the highways, with enhanced wear and tear on the roads and augmented hazards to other traffic, which imposes on the state a heavier financial burden for highway maintenance and policing than do other types of motor car traffic. We cannot say that these circumstances do not afford an adequate basis for special licensing and taxing provisions, whose only effect, even when applied to interstate traffic, is to enable the state to police it, and to impose upon it a reasonable charge, to defray the burden of this state expense, and for the privilege of using the state highways."

The State of California has found it expedient to adopt licensing provisions for this class of traffic and to exact the fees specified in the statute for the use of its highways and the expense of policing. That this peculiar type of traffic occurs in large volume between eastern points and points in California, and that there is basis for the legislative judgment that the traffic imposes special burdens on the use of the state highways for which a special charge may be made, are abundantly supported by the record. The parties have stipulated that fifteen thousand automobiles are brought into the state for sale annually. Of these, from 80 to 90 per cent. come in caravans or convoys, and of the cars so moving one-half are coupled together in twos. It further appears by stipulation that the caravans or convoys are made up of from nineteen to twenty-five cars.

There is much evidence in the record indicating that it is the long haul traffic in cars for sale in California which tends to produce the movement in large caravans or convoys in order to save expense of transportation, and which in turn tends to impose special burdens on the state in connection with the use of its highways, calling for the imposition of regulations and fees different from those applied to other types of motor car movement. Without repeating what was said more at length of like traffic in *Morf* v. *Bingaman, supra,* the evidence in the present case shows that coupled cars, under control of a single driver, subject the highways to increased wear and tear because of their tendency to skid and sway on curves and in passing other traffic, and that the length of the caravans and the inefficiency and irresponsibility of the drivers,

casually employed, increase traffic congestion and the inconveniences and hazards of automobile traffic. These circumstances have caused the state to make increased provision for the policing of the traffic. It is true that the district court found that the practice of caravaning creates no additional traffic hazard, nor any undue wear and tear on the highways. But in this we think that its determination was not only contrary to the evidence, but went beyond the judicial province.

It is no longer open to question that the states have constitutional authority to exact reasonable fees for the use of their highways by vehicles moving interstate, *Hendrick* v. *Maryland*, 235 U. S. 610; *Kane* v. *New Jersey*, 242 U. S. 160; *Clark* v. *Poor*, 274 U. S. 554; *Sprout* v. *South Bend*, 277 U. S. 163; *Morf* v. *Bingaman, supra; Dixie Ohio Express Co.* v. *State Revenue Comm'n*, decided January 30, 1939, and that for that purpose they may classify the vehicles according to the character of the traffic and the burden it imposes on the state by that use, and charge for the use a fee not shown to be unreasonable or excessive. *Continental Baking Co.* v. *Woodring*, 286 U. S. 352, 370-371; *Hicklin* v. *Coney*, 290 U. S. 169; *Morf* v. *Bingaman, supra*, 413; *Dixie Ohio Express Co.* v. *State Revenue Comm'n, supra.*

The classification of the traffic for the purposes of regulation and fixing fees is a legislative, not a judicial, function. Its merits are not to be weighed in the judicial balance and the classification rejected merely because the weight of the evidence in court appears to favor a different standard. Cf. *Worcester County Trust Co.* v. *Riley*, 302 U. S. 292, 299. The determination of the legislature is presumed to be supported by facts known to it, unless facts judicially known or proved preclude that possibility. *Standard Oil Co.* v. *Marysville*, 279 U. S. 582, 584; *Borden's Farm Products Co.* v. *Ten Eyck*, 297 U. S. 251, 263; s. c. 11 F. Supp. 599, 600; *South Carolina Highway Department* v. *Barnwell Bros.*, 303 U. S. 177, 191-192; *United States* v. *Carolene Products Co.*, 304 U. S. 144, 153-154. Hence, in passing on the validity of the present classification, it is not the province of a court to hear and examine evidence for the purpose of deciding again a question which the legislature has already decided. Its function is only to determine whether it is possible to say that the legislative decision is without rational basis. This is equally the case where the classification, which is one which the legislature was competent to make, is applied to vehicles

using the state highways in interstate commerce. *South Carolina Highway Department* v. *Barnwell Bros.*, *supra*, 187 *et seq.* The legislature must be assumed to have acted on information available to courts, and where, as here, the evidence, like that discussed in *Morf* v. *Bingaman, supra,* shows that it is at least a debatable question whether the traffic in caravans involves special wear and tear of the highways and increased traffic hazards requiring special police control, decision is for the legislature and not the courts. *Standard Oil Co.* v. *Marysville, supra; South Carolina Highway Department* v. *Barnwell Bros., supra.*

Appellee Paul Gray, Inc., so far as appears, caravans its cars for sale in California from Detroit, Michigan, and St. Joseph, Missouri. Its cars, like those of the other appellees, move in caravans of from nineteen to twenty-five cars. It does not appear, nor is it contended, that this appellee transports any cars singly. From what has been said it is evident, as was decided in *Morf* v. *Bingaman, supra,* that cars moving in caravans of the type described constitute a special class of traffic which may be taxed or charged for differently from other classes without infringing the equal protection clause.

The argument that the statute denies equal protection to appellees because it exacts fees for cars transported into the state for sale singly but none for cars which move similarly intrazone or for those which enter the state not for purposes of sale, ignores the actual circumstances in which the statute is applied to appellees, as shown by the record, and seeks to take advantage of an alleged discrimination which, if it exists, does appellees no harm. The Fourteenth Amendment does not require classification for fees, more than for taxation, to follow any particular form of words. If that adopted results in the application of the exaction to a class which may be separately charged without a denial of equal protection, those within the class cannot complain that it might have been more aptly defined or that the statute may tax others who are not within the class. See *Patsone* v. *Pennsylvania,* 232 U. S. 138, 144; *Silver* v. *Silver,* 280 U. S. 117, 123; *Morf* v. *Bingaman, supra,* 413.

It is the practice of transporting automobiles for long distances over the highway for purpose of sale which has given rise to the practice of moving them in caravans. The use of automobiles for other purposes, or for pleasure, does not have that result. The

classification of the statute, in its practical application, embraces and is constitutionally applicable to cars moving in caravans, the class of traffic in which appellee Paul Gray, Inc., engages and on which it is alone taxed. One form of discrimination of which it complains is that fees are exacted for cars driven into the state singly for sale but not for those driven singly to market intrazone or singly from without the state for other purposes. Appellee does not show that it belongs to either class, and so far as the traffic in which it participates is properly taxed, it cannot complain of the imposition of the charge on a business which it does not do.

So far as appellees complain that no fee is exacted for cars which move for sale intrazone in caravans, different considerations apply. As we have said, it is the long haul of cars for sale which has produced motor vehicle caravans and has made them a special class for the purposes of regulation and imposition of fees. It was for the legislature to consider and decide whether the actual conditions which prevail in the state, affecting movement of cars for sale, eliminate or so reduce the burden of the caravan traffic on the highways as to call for a different classification of the short haul traffic for the purposes of regulation and fees. The legislature having made its classification by the establishment of zones, in the light of special conditions in the state, courts are not free to set aside its determination unless they can say that it is without any substantial basis. *Carley & Hamilton* v. *Snook*, 281 U. S. 66, 73; *Continental Baking Co.* v. *Woodring, supra; Sproles* v. *Binford*, 286 U. S. 374; *Hicklin* v. *Coney, supra; Aero Mayflower Transit Co.* v. *Public Service Comm'n*, 295 U. S. 285.

The trial court found that cars are often moved in convoys in Zone 1, which includes the metropolitan area of Los Angeles, and it thought this sufficienct to establish an unlawful discrimination without consideration of the other conditions affecting the intrazone traffic. The evidence establishes, beyond any reasonable doubt, that the movement intrazone of cars for sale in convoys similar to that of appellees is negligible and that the principal sources of cars for sale moving intrazone are the assembly plants of automobile manufacturers located in or near the metropolitan areas of Los Angeles and San Francisco. Being new cars, the bulk of them, shipped interstate or to distant points intrastate, move by rail, water, or truck. Most of those which move on their own wheels are driven relatively short distances, seventy-five

miles or less, in the metropolitan area over highways of more than two lanes, as distinguished from caravans coming from without the state, which move for long distances over two-lane highways in mountain districts. The proportion driven singly does not appear. Such convoys or caravans as there are usually consist of two or three cars. The evidence discloses no case of more than four. Coupling is negligible. Each car is in charge of a regularly employed and licensed driver. The intrazone movement is subject to other licensing and taxing provisions of the state law, and no showing is made that the differences in fees or taxes exacted from the two classes of traffic do not bear a fair relationship to the differences in the burden of the traffic for which the state must provide.

The legislature could reasonably have concluded that the wear and tear and injury to the highways from driving coupled cars intrazone was negligible, and that the relatively short distances which cars are driven in twos or threes, the character of the highways used, and the difference in the class of drivers, taken together, eliminate from the intrazone traffic or so substantially reduce the burden imposed by traffic like that of appellees moving interstate or interzone as to require, in fairness, a different classification for the purpose of fees charged for the use of the highways. We cannot say that that conclusion is without support or infringes the principles which we have repeatedly recognized as defining the power of the states, in the absence of Congressional action, to classify vehicles or traffic for the purposes of regulating use of the highways by vehicles moving interstate. If the classification with respect to a matter remaining within state control, despite the commerce clause, is otherwise valid, it is not any the less so because it affects interstate commerce. See *South Carolina Highway Department* v. *Barnwell Bros., supra,* 191-192, and cases cited. As the state has authority to charge a reasonable fee for the use of its highways, and as the classification of the traffic which the state has made for the purpose of fixing the fees is valid, the only remaining question is whether the fees which it has fixed must be deemed excessive.

REASONABLENESS OF THE FEES.

In *Ingels* v. *Morf, supra,* the $15 fee charged under the California Act of 1935 for driving a car into the state for purpose of sale was contested as excessive. There the statute declared that the fee was "intended to reimburse the State treasury for the added

expense which the State may incur in the administration and enforcement of this act and the added expense of policing the highways over which such caravaning may be conducted, ..." and the automobile owner assumed and by proof sustained the burden of showing that the charge made for the precise purposes defined by the statute was excessive. We accepted the evidence as establising that the cost of issuing caravan permits was about $5 per car and as supporting the finding of the trial court that the cost of policing did not exceed $5 a car. And we concluded that the total cost of administration and policing was substantially less than the $15 fee charged.

Here a fee of $7.50 is collected for administration and enforcement of the Act and a fee of like amount is charged for the use of the highways. Appellees have offered no proof that either of the fees is too large, although the burden rested upon them to show that the fees were excessive for the declared purposes. *Hendricks* v. *Maryland, supra,* 624; *Interstate Busses Corporation* v. *Blodgett,* 276 U. S. 245, 251; *Morf* v. *Bingaman, supra,* 410; *Ingels* v. *Morf, supra,* 296. *Great Northern Railway* v. *Washington,* 300 U. S. 154, is not to the contrary.

Appellants, without abandoning their position that the burden of proof rests on appellees, offered evidence to show that the costs of administration and policing proved in *Ingels* v. *Morf, supra,* were incomplete. Due to the nature of the case much of the proof is inexact and speculative. But there is evidence that thirty-nine officers devoted part or all of their time to enforcing the 1937 Act. The expense of operating their automobiles and motorcycles is considerable; an increased burden is imposed upon the personnel of the border police stations; and some increase in clerical force and in expenditures for stationery and miscellaneous items has been required. Investigations of attempted evasions increase the unit cost above that of other types of traffic. The total of these added expenses, as computed by appellants at about $133,000 annually, certainly approximates the amount of the revenue derived from the fees. The aggregate of the fees collected during eleven months for 14,000 cars at $7.50 each is $105,000. Appellees do nothing to challenge this evidence, and they point to no specific errors in the estimates or computation upon which appellants calculate the costs.

The state is not required to compute with mathematical precision the cost to it of the services necessitated by the caravan traffic. If

the fees charged do not appear to be manifestly disproportionate to the services rendered, we cannot say from our own knowledge or experience that they are excessive. *Kane* v. *Maryland, supra,* 168; *Interstate Busses Corp.* v. *Blodgett, supra,* 251, 252; *Morf* v. *Bingaman, supra; Dixie Ohio Express Co.* v. *State Revenue Comm'n, supra;* see *Patapsco Guano Co.* v. *North Carolina,* 171 U. S. 345, 354; *McLean* v. *Denver & Rio Grande R. Co.,* 203 U. S. 38, 55; *Interstate Transit, Inc.* v. *Lindsey,* 283 U. S. 183, 186. Appellees have failed to sustain the burden of proof that either of the fees is excessive for the purpose for which it is collected.

The trial court seems to have thought, as appellees argue, that unreasonableness of the fees was established by proof that the same fees are not imposed on other classes of traffic. But since, as we have seen, there is basis for the classification of the traffic, there is basis for a difference in fees charged the different classes. *Hendrick* v. *Maryland, supra; Interstate Busses Corp. v. Blodgett, supra.* Appellees have laid no foundation for any contention that there are not compensating differences in the traffic comparable to the difference in fees, or for impeaching the legislative judgment that those specified are fairly related to the traffic to which they are applied.

The cause will be reversed with instructions to the district court to dismiss the case as to appellee Paul Gray, Inc., on the merits, and to dismiss as to the other appellees for want of jurisdiction.

So ordered.

Mr. Justice BLACK is of the opinion that the case should be dismissed for want of jurisdiction as to all the appellees.